AND
BRIEFS

FILED
JAN 17 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 15-1189

In the Supreme Court of the United States

IMPRESSION PRODUCTS, INC.,

Petitioner,

v.

LEXMARK INTERNATIONAL, INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAR. 21, 2016
CERTIORARI GRANTED DEC. 2, 2016

TABLE OF CONTENTS

Relevant Docket Entries in the Southern District of Ohio 1

Relevant Docket Entries in the Federal Circuit (No. 14-1617) 28

Relevant Docket Entries in the Federal Circuit (No. 14-1619) 32

Excerpts from Transcript of Proceedings (June 17, 2013) 34

Second Amended Complaint (November 1, 2013) 51

Joint Motion for Entry of Stipulated Order (May 29, 2014) 80

Stipulated Permanent Injunction (May 29, 2014) 96

Stipulated Final Judgment (May 29, 2014) 102

Order on Joint Motion (June 23, 2014) 106

The following items are not reproduced in the joint appendix because they have already been reproduced in the petition for a writ of certiorari, at the pages indicated:

Appendix A – The Federal Circuit's *en banc* decision (February 12, 2016) 1a

Appendix B – The Federal Circuit's *sua sponte* en banc order (April 14, 2015) 136a

Appendix C – The district court's conditional-sale decision (March 27, 2014).... 140a

Appendix D – The district court's international exhaustion decision (March 27, 2014)..... 156a

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

LEXMARK INTERNATIONAL, INC.,
Plaintiff,
v.
INK TECHNOLOGIES PRINTER, LLC ET AL.,
Defendants.

No. 1:10-cv-00564-MRB

RELEVANT DOCKET ENTRIES

NO.	DATE	DESCRIPTION
1	08/20/2010	COMPLAINT with JURY DEMAND against All Defendants, filed by Lexmark International, Inc.
84	12/08/2010	Joint MOTION for Entry of Stipulated Permanent Injuction, Consent Judgment and Dismissal With Prejudice by Plaintiff Lexmark International, Inc., Defendant Virtual Imaging Products, Inc.
87	12/21/2010	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE AND ORDER re Print-Rite Holdings, Ltd. and Union Technology Int'l

NO.	DATE	DESCRIPTION
		(M.C.O.) Co., Ltd.
90	01/11/2010	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE re Defendant Nectron International, Inc.
91	01/11/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE re Alpha Image International, Inc. and E-Toner Mart, Inc.
93	01/19/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to defendants Ninestar Image Co., Ltd., Ninestar Image Int'l, Ltd., Seine Image International Co., Ninestar Technology Company, Ltd., Ziprint Image Corporation and Nano Pacific Corp.
96	03/21/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to defendant Acecom, Inc.
97	03/21/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL

NO.	DATE	DESCRIPTION
		WITH PREJUDICE as to defendant Chung Pal Shim
100	04/14/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to defendant Ink Technologies Printer Supplies, LLC
101	04/14/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to defendant IJSS Inc.
103	08/02/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to defendants Jahwa Electronics Co., Ltd., Huizhou Jahwa Electronics Co., Ltd., Laser Toner Technology, Copy Technologies, and C&R Services, Incorporated
105	09/15/2011	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to defendant Direct Billing International Incorporated
114	11/17/2011	STIPULATED PERMANENT INJUCTION, CONSENT

NO.	DATE	DESCRIPTION
		JUDGMENT, AND DISMISSAL WITH PREJUDICE as to ACM Technologies granting Joint MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by ACM Technologies, Inc., Lexmark International, Inc.
122	06/20/2020	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to John Doe Defendant Tonercharge
129	07/08/2012	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to John Doe Defendant KG TonerNu, Inc.
130	07/08/2012	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to John Doe Defendant enhanced Laser Products
131	07/08/2012	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to John Doe Defendant Quality Printing

NO.	DATE	DESCRIPTION
132	07/08/2012	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to John doe Defendant Image Solutions
134	07/09/2012	STIPULATED PERMANENT INJUCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to John doe Defendant Imex America Corporation
146	07/30/2012	CONSENT JUDGMENT granting 137 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
147	07/30/2012	CONSENT JUDGMENT granting 138 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
148	07/30/2012	CONSENT JUDGMENT granting 139 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International,

NO.	DATE	DESCRIPTION
		Inc.
149	07/30/2012	CONSENT JUDGMENT granting 140 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
150	07/30/2012	CONSENT JUDGMENT granting 141 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
151	07/30/2012	CONSENT JUDGMENT granting 142 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
152	08/01/2012	CONSENT JUDGMENT granting 143 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
153	08/01/2012	CONSENT JUDGMENT granting 144 MOTION for Entry

NO.	DATE	DESCRIPTION
		of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
157	08/06/2012	CONSENT JUDGMENT granting 154 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
158	08/06/2012	CONSENT JUDGMENT granting 155 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
159	08/06/2012	CONSENT JUDGMENT granting 156 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
164	08/13/2012	CONSENT JUDGMENT granting 156 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International,

NO.	DATE	DESCRIPTION
		Inc.
176	08/22/2012	CONSENT JUDGMENT granting 163 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
177	08/22/2012	CONSENT JUDGMENT granting 167 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
178	08/22/2012	CONSENT JUDGMENT granting 168 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
179	08/22/2012	CONSENT JUDGMENT granting 169 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
180	08/22/2012	CONSENT JUDGMENT granting 171 MOTION for Entry

NO.	DATE	DESCRIPTION
		of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
181	08/22/2012	CONSENT JUDGMENT granting 162 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
184	08/28/2012	CONSENT JUDGMENT granting 172 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
185	08/28/2012	CONSENT JUDGMENT granting 173 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
188	09/04/2012	CONSENT JUDGMENT granting 183 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International,

NO.	DATE	DESCRIPTION
		Inc.
189	09/04/2012	CONSENT JUDGMENT granting 182 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
194	09/13/2012	CONSENT JUDGMENT granting 187 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
195	09/13/2012	CONSENT JUDGMENT granting 190 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
196	09/13/2012	CONSENT JUDGMENT granting 174 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
199	09/25/2012	CONSENT JUDGMENT granting 191 MOTION for Entry

NO.	DATE	DESCRIPTION
		of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
200	09/25/2012	CONSENT JUDGMENT granting 192 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
201	09/25/2012	CONSENT JUDGMENT granting 193 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
212	12/03/2012	CONSENT JUDGMENT granting 210 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
214	12/20/2012	CONSENT JUDGMENT granting 213 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment and Dismissal with Prejudice filed by Lexmark International,

NO.	DATE	DESCRIPTION
		Inc.
227	03/04/2013	STIPULATED ENTRY granting Motion for Contempt
233	04/22/2013	AMENDED COMPLAINT against Direct Billing International Incorporated, IJSS Inc., Blue Trading LLC, Core Servicios Informaticos S.I., ECOI US Supplies, Inc., Eco Service China Ltd., Enviro Green Technologies, Exprint International, Inc., FBA Holding, Inc., Fuller International Corporation, Green Imaging Supplies, Inc., Green Project, Inc., Impression Products, Inc. ,Interseroh Product Cycle GmbH, K&W International Development, Inc., LD Products, Inc., N&L Global Co., NGS S.A., Onlinetechstores.com, Inc., Prinko Image Co. (USA), Printronic Corporation, Recyca BVBA, Refiltoner, Shanghai Orink Infotech International Co., Ltd., Standard Image USA, Inc., Tech Optics, Inc., Tesen Development (Hong Kong) Co. Ltd., Wal Group LLC, XSE Group, Inc., Zhuhai Richeng Development Co., Ltd., MBC Trading, Inc., filed by Lexmark

NO.	DATE	DESCRIPTION
		International, Inc.
280	06/19/2013	STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE granting 264 MOTION for Permanent Injunction filed by Lexmark International, Inc.
281	06/19/2013	STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE granting 265 MOTION for Permanent Injunction filed by Lexmark International, Inc.
296	06/25/2013	STIPULATION ORDER FOR CONTEMPT granting Joint Motion for Stipulation
297	06/25/2013	STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE granting 284 Joint MOTION Entry of Stipulated Permanent Injunction, Consent Judgment And Dismissal With filed by IJSS Inc. and Lexmark International, Inc.
304	07/01/2013	STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT AND DISMISSAL

NO.	DATE	DESCRIPTION
		WITH PREJUDICE granting 298 MOTION for Permanent Injunction, filed by Lexmark International, Inc.
335	07/30/2013	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendant Impression Products, Inc.
350	08/02/2013	STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE granting 342 MOTION for Entry of Stipulated Permanent Injunction, Consent Judgment And Dismissal With Prejudice filed by Lexmark International, Inc. and Optimus Graphics Corporation
351	08/02/2013	STIPULATED PERMANENT INJUNCTION as to Printronic Corporation
352	08/02/2013	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE as to Printronic Corporation
358	08/13/2013	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE OF ECOI re MOTION for Entry of Stipulated Permanent Injunction, Final

NO.	DATE	DESCRIPTION
		Judgment and Dismissal
359	08/13/2013	STIPULATED PERMANENT INJUNCTION RE MOTION for Entry of Stipulated Permanent Injunction, Final Judgment and Dismissal of Permanent Injunction
360	08/15/2013	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE re MOTION for Entry of Stipulated Permanent Injunction, Final Judgment and Dismissal
361	08/15/2013	STIPULATED PERMANENT INJUNCTION RE MOTION for Entry of Stipulated Permanent Injunction, Final Judgment and Dismissal filed by Lexmark International, Inc.
367	08/22/2013	RESPONSE to Motion re MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Plaintiff Lexmark International, Inc.
368	08/23/2013	REPLY to Response to Motion re MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendant Impression Products, Inc.
375	08/28/2013	Clerk's ENTRY OF DEFAULT as to Direct Billing International

NO.	DATE	DESCRIPTION
		Incorporated
378	09/03/2013	MOTION for Leave to File by Plaintiff Lexmark International, Inc.
379	09/03/2013	RESPONSE in Opposition re MOTION for Leave to File filed by Defendant Impression Products, Inc.
387	09/05/2013	STIPULATED PRELIMINARY INJUCTION
395	09/16/2013	Second MOTION TO DISMISS FOR FAILURLE TO STATE A CLAIM by Defendant Impression Products, Inc.
410	09/27/2013	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE as to Wal Group LLC and Wal Group LLC
411	09/27/2013	STIPULATED PERMANENT INJUNCTION
412	09/27/2013	STIPULATED ORDER OF CONTEMPT
413	09/27/2013	ORDER granting MOTION for Entry of Order of Contempt, Stipulated Permanent Injunction, Final Judgment and Dismissal with Prejudice filed by Lexmark International, Inc.
414	09/27/2013	ORDER granting Motion for Entry of Stipulated Permanent

NO.	DATE	DESCRIPTION
		Injunction and Final Judgment and Dismissal with Prejudice against Standard Image USA, Inc.
416	09/27/2013	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE as to Standard Image USA, Inc.
417	09/27/2013	STIPULATED PERMANENT INJUNCTION
431	10/10/2013	RESPONSE in Opposition re Second MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Plaintiff Lexmark International
434	10/11/2013	REPLY to Response to Motion re 395 Second MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendant Impression Products, Inc.
436	10/14/2013	Clerk's ENTRY OF DEFAULT as to Defendant MBC Trading, Inc.
440	10/15/2013	MOTION for Leave to File Sur-Reply to Second Motion to Dismiss of Defendant Impression Products by Plaintiff Lexmark International, Inc.
447	10/21/2013	ORDER granting Motion for Stipulated Permanent

NO.	DATE	DESCRIPTION
		Injunction as to Precision Printer; granting Motion for Stipulated Permanent Injunction as to T3 Toner, LLC
448	10/21/2013	STIPULATED PERMANENT INJUNCTION AND CONSENT JUDGMENT AS TO Precision Printer Services.
449	10/21/2013	STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to T3 Toner, LLC.
450	10/22/2013	RESPONSE to Motion re MOTION for Leave to File Sur-Reply to Second Motion to Dismiss of Defendant Impression Products filed by Defendant Impression Products, Inc.
463	11/01/2013	AMENDED COMPLAINT (Second) for Patent Infringement against Blue Trading LLC, Core Servicios Informaticos S.I., Direct Billing International Incorporated, Eco Service China Ltd., Exprint International, Inc., FBA Holding, Inc., Green Cartridge Company, Green Project, Inc., Impression Products, Inc., Interseroh Product Cycle GmbH,

NO.	DATE	DESCRIPTION
		LD Products, Inc., MBC Trading, Inc., N & L Global Co., NGS S.A., Onlinetechstores.com, Inc., Prinko Image Co. (USA), Recyca BVBA, Refiltoner, Shanghai Orink Infotech International Co., Ltd., Tech Optics, Inc., Tesen Development (Hong Kong) Co. Ltd., Zhuhai Richeng Development Co., Ltd., Eco Service Sp. z o.o., Hock Group LLC, LTS Consumables, Inc., OW Supplies Corp., Sinotime Technologies, Inc., TonerLand, Zhuhai Aicon Image Co., Ltd., filed by Lexmark International, Inc.
470	11/05/2013	Clerk's ENTRY OF DEFAULT as to Defendant Recyca BVBA
471	11/05/2013	Clerk's ENTRY OF DEFAULT as to Defendant Green Cartridge Company
472	11/05/2013	Clerk's ENTRY OF DEFAULT as to Defendant Zhuhai Richeng Development Co.
473	11/05/2013	Clerk's ENTRY OF DEFAULT as to Defendant Shanghai Orink Infotech International Co., Ltd.
474	11/05/2013	Clerk's ENTRY OF DEFAULT as to Defendant Refiltoner
476	11/05/2013	Clerk's ENTRY OF DEFAULT

NO.	DATE	DESCRIPTION
		as to Defendant NGS S.A.
478	11/12/2013	DISMISSAL WITH PREJUDICE granting Joint MOTION for Entry of Dismissal as to FBA Holdings, Inc. filed by Lexmark International, Inc.
479	11/12/2013	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE
480	11/12/2013	STIPULATED PERMANENT INJUNCTION
485	11/25/2013	NOTICE by Defendant Impression Products, Inc. of Additional Authority Regarding its Motion to Dismiss Re Jazz Photo
488	11/26/2013	Response re Notice (Other) of Additional Authority by Plaintiff Lexmark International, Inc.
491	11/27/2013	Reply re Response (non motion) to the Notice of Additional Authority by Defendant Impression Products, Inc.
534	12/20/2013	STIPULATED PERMANENT INJUNCTION, CONSENT JUDGMENT, AND DISMISSAL WITH PREJUDICE as to Blue Trading, LLC
548	01/03/2014	NOTICE of Voluntary Dismissal of Defendant Eco Service China,

NO.	DATE	DESCRIPTION
		Ltd. by Plaintiff Lexmark International, Inc.
556	01/06/2014	ORDER FOR DEFAULT JUDGMENT granting MOTION for Default Judgment against Prinko Image Co. (USA), Inc filed by Lexmark International, Inc.
557	01/08/2014	ORDER FOR DEFAULT JUDGMENT granting MOTION for Default Judgment against MBC Trading, Inc. filed by Lexmark International, Inc.
558	01/08/2014	ORDER FOR DEFAULT JUDGMENT granting MOTION for Default Judgment against Shanghai Orink InfoTech International Co., Ltd. filed by Lexmark International, Inc.
559	01/08/2014	ORDER FOR DEFAULT JUDGMENT granting MOTION for Default Judgment against Zhuhai Richeng Development Co., Ltd. filed by Lexmark International, Inc.
560	01/08/2014	ORDER FOR DEFAULT JUDGMENT granting MOTION for Default Judgment against Refiltoner filed by Lexmark International, Inc.
561	01/08/2014	ORDER FOR DEFAULT

NO.	DATE	DESCRIPTION
		JUDGMENT granting MOTION for Default Judgment against NGS S.A. filed by Lexmark International, Inc.
562	01/08/2014	ORDER FOR DEFAULT JUDGMENT granting MOTION for Default Judgment against Enviro Green Technologies filed by Lexmark International, Inc.
563	01/08/2014	ORDER re Notice of Voluntary Dismissal filed by Lexmark International, Inc.
567	01/22/2014	ORDER granting MOTION to Set Aside Clerk's Entry of Default
568	01/22/2014	STIPULATED PERMANENT INJUNCTION as to LTS Consumables
569	01/22/2014	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE as to LTS Consumables
570	01/23/2014	Clerk's ENTRY OF DEFAULT as to Defendant Core Servicios Informaticos S.I.
585	02/18/2014	Clerk's ENTRY OF DEFAULT as to Defendant Zhuhai Aicon Image Co., Ltd.
587	02/19/2014	STIPULATED PERMANENT INJUNCTION AS TO

NO.	DATE	DESCRIPTION
		Tonerland.
588	02/19/2014	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE as to TonerLand
604	03/06/2014	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE at to Hock Group LLC d/b/a ProfessorInk.com
605	03/06/2014	STIPULATED PERMANENT INJUNCTION AS TO Hock Group LLC.
614	03/27/2014	ORDER granting Motion for Leave to File Surreply re Motion to Dismiss
615	03/27/2014	ORDER granting Motion to Dismiss for Failure to State a Claim as to Defendant Impression Products, Inc.
616	03/27/2014	ORDER denying 378 Motion for Leave to File to file surrepy
617	03/27/2014	ORDER denying Motion to Dismiss for Failure to State a Claim as to Defendant Impression Products, Inc.
619	03/27/2014	STIPULATED PERMANENT INJUNCTION and Dismissal with Prejudice with respect to OnlineTechStores.com, Inc. filed by Lexmark International, Inc.
620	03/27/2014	STIPULATED PERMANENT

NO.	DATE	DESCRIPTION
		INJUNCTION AND DISMISSAL WITH PREJUDICE with respect to Recyca BVBA filed by Lexmark International, Inc.
621	03/27/2014	DISMISSAL WITH PREJUDICE re Permanent Injunction as to Recyca BVBA granting Motion for entry of consent judgment and dismissal with prejudice
635	04/03/2014	STIPULATED PERMANENT INJUNCTION AND DISMISSAL WITH PREJUDICE as to OW Supplies
636	04/03/2014	STIPULATED PERMANENT INJUNCTION AND DISMISSAL WITH PREJUDICE as to N&L Global Corp.
647	04/29/2014	STIPULATED PERMANENT INJUNCTION Dismissal with Prejudice as to LD Products, Inc filed by Lexmark International, Inc.
648	04/29/2014	STIPULATED PERMANENT INJUNCTION as to Sinotime Technologies, Inc.
649	04/29/2014	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE as to Sinotime

NO.	DATE	DESCRIPTION
		Technologies, Inc.
650	04/29/2014	STIPULATED PERMANENT INJUNCTION as to Tech Optics, Inc.
651	04/29/2014	FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE as to Tech Optics, Inc.
658	05/29/2014	NOTICE of Voluntary Dismissal as to Defendant Eco Service Sp. Z o.o. by Plaintiff Lexmark International, Inc.
659	05/29/2014	NOTICE of Voluntary Dismissal as to Defendant Core Servicios Informaticos, S.L. by Plaintiff Lexmark International, Inc.
660	05/29/2014	NOTICE of Voluntary Dismissal as to Defendant Interseroh Product Cycle GmbH by Plaintiff Lexmark International, Inc.
662	06/17/2014	STIPULATED PERMANENT INJUNCTION as to Benigno (Benny) Adeva; ACI Supplies, LLC; All Color Imaging, Inc.; ABD Office Machines, Inc. d/b/a ABD Office Machines, Inc., ABD Office Solutions, InkTonerDepot.com, ABD Office Solutions; and TonerBoss LLC d/b/a TonerOfEarth, TonerGreen,

NO.	DATE	DESCRIPTION
		JustGreenStuff.com, Inkjet Universe, RoboToner, ColorToner Expert, TonerFarm
663	06/17/2014	STIPULATED PERMANENT INJUNCTION as to Benigno (Benny) Adeva; ACI Supplies, LLC; All Color Imaging, Inc.; ABD Office Machines, Inc. d/b/a ABD Office Machines, Inc., ABD Office Solutions, InkTonerDepot.com, ABD Office Solutions; and TonerBoss LLC d/b/a TonerOfEarth, TonerGreen, JustGreenStuff.com, Inkjet Universe, RoboToner, ColorToner Expert, TonerFarm.
666	06/23/2014	ORDER granting Motion for Default Judgment against Direct Billing International Incorporated d/b/a Office Supply Outfitters.
667	06/23/2014	ORDER granting Motion for Default Judgment against Zhuhai Aicon Image Co. Ltd.
668	06/24/2014	STIPULATED PERMANENT INJUNCTION as to Impression Products, Inc.
669	06/24/2014	ORDER granting 661 SEALED MOTION filed by Impression Products, Inc., Lexmark

NO.	DATE	DESCRIPTION
		International, Inc.
670	06/24/2014	STIPULATED FINAL JUDGMENT.
671	06/26/2014	NOTICE OF APPEAL as to Judgment by Defendant Impression Products, Inc.
672	06/27/2014	NOTICE OF APPEAL as to Judgment by Plaintiff Lexmark International, Inc.
673	07/15/2014	TRANSCRIPT REQUEST as to Lexmark International, Inc. by Plaintiff Lexmark International, Inc.
681	03/17/2015	NOTICE by Plaintiff Lexmark International, Inc., Defendant Impression Products, Inc.
685	03/14/2016	ORDER of USCA for the Federal Circuit as to Notices of Appeal:
686	03/25/2016	MANDATE of USCA as to Notices of Appeal
687	03/30/2016	ERRATUM of USCAFC re Notices of Appeal

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

LEXMARK INTERNATIONAL, INC.,
Plaintiff-Cross-Appellant,
v.
IMPRESSION PRODUCTS, INC.,
Defendant-Appellant.

No. 14-1617

RELEVANT DOCKET ENTRIES

NO.	DATE	DESCRIPTION
1	7/14/14	Appeal Docketed.
20	9/5/14	Opening Brief – Tendered from Appellant Impression Products, Inc.
24	10/20/14	Opening Brief – Tendered from Cross-Appellant Lexmark International, Inc. (This brief has been withdrawn.)
26	10/21/14	Notice of Correction to the Brief Doc No. [24] for Cross-Appellant Lexmark International, Inc.

NO.	DATE	DESCRIPTION
27	10/21/14	Corrected Opening Brief – Tendered from Cross-Appellant Lexmark International, Inc.
29	10/23/14	The previously filed brief filed by Cross-Appellant Lexmark International, Inc. is withdrawn.
31	10/30/14	Citation of Supplemental Authority pursuant to Fed. R. App. P. 28(j) for Cross-Appellant Lexmark International, Inc.
32	11/12/14	Reply Brief – Tendered from Appellant Impression Prods., Inc.
54	12/15/14	Reply Brief – Tendered from Cross-Appellant Lexmark International, Inc.
57	12/23/14	Joint Appendix. (This brief has been replaced. See ECF. 64.)
59	12/30/14	Notice of Correction to the Brief Doc No. [57]

NO.	DATE	DESCRIPTION
60	12/30/14	Corrected Joint Appendix
61	12/30/14	Corrected Confidential Joint Appendix
83	04/14/15	Precedential Order, case to be heard en banc
105	06/12/15	Opening Brief – Tendered from Appellant Impression Products, Inc.
239	08/12/15	Response Brief – Tendered from Cross-Appellant Lexmark International, Inc.
316	08/27/15	Reply Brief – Tendered from Appellant Impression Products, Inc.
338	02/12/16	OPINION and JUDGMENT filed
339	02/12/16	CORRECTED OPINION and JUDGMENT filed
340	03/21/16	Mandate issued to the United States District Court for the Southern District of Ohio

NO.	DATE	DESCRIPTION
341	03/23/16	Petition for writ of Certiorari filed on 03/21/2016 in the Supreme Court of the United States
342	03/28/16	ERRATA to the Precedential Opinion Doc No.: [339]

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

LEXMARK INTERNATIONAL, INC.,
Plaintiff-Cross-Appellant,
v.
IMPRESSION PRODUCTS, INC.,
Defendant-Appellant.

No. 14-1619

RELEVANT DOCKET ENTRIES

NO.	DATE	DESCRIPTION
1	7/14/14	Appeal Docketed.
7	10/21/14	Opening Brief – TENDERED from Cross-Appellant Lexmark International, Inc.
8	10/20/14	Notice of Correction to the Brief Doc No. [7] for Cross-Appellant Lexmark International, Inc.
9	10/21/14	Corrected Opening Brief – TENDERED from Cross-Appellant Lexmark International, Inc.

NO.	DATE	DESCRIPTION
11	04/14/15	PRECEDENTIAL ORDER filed, case to be heard en banc
15	02/12/16	OPINION AND JUDGMENT filed
16	02/12/16	CORRECTED OPINION AND JUDGMENT filed
17	03/21/16	Mandate issued to the United States District Court for the Southern District of Ohio
18	03/28/16	ERRATA to the Precedential Opinion Doc No.: [16]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LEXMARK INTERNATIONAL, INC.,
Plaintiff,

- v -

INK TECHNOLOGIES PRINTER, SUPPLIES, LLC, et al.,
Defendants.

CASE NO. 1:10-CV-564
Hearing on Motion for Contempt
9:40 A.M.
Monday, June 17, 2013
Cincinnati, Ohio

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE MICHAEL R. BARRETT

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Courtroom Deputy:	Barbara A. Crum
Court Reporter:	Maryann T. Maffia, RDR 239 Potter Stewart U.S. Courthouse 100 East Fifth Street Cincinnati, Ohio 45202

[Pages 3 – 14 omitted]

[15] Lexmark's cartridges, and they infringe Lexmark's cartridges unless there is patent exhaustion.

IJSS in its brief at page 14 admitted that, according to the law of the Federal Circuit, it is its burden of proof to quote -- or its burden of proof is to show patent exhaustion. "Patent exhaustion is an affirmative defense for which IJSS has the burden of proof." They admit that.

What evidence are we going to see that there was any patent exhaustion for any of the 3,121 of the cartridges that it sold through November of 2012? You're not going to see anything at this hearing. There will be absolutely no evidence of exhaustion presented.

Now, it's not our burden to show a lack of patent exhaustion. We don't have to disprove the negative. However, we can show substantial evidence that our patent rights were not exhausted.

One of the ways that we can do this is to start here with Lexmark's worldwide brand protection strategy. Mr. Gardner, Lexmark's corporate witness here today, is the Worldwide Brand Protection Manager for Lexmark. He will testify that as part of Lexmark's brand protection strategy they regionalize their cartridges. What that means is that a cartridge sold for use in one region is only meant to work with printers sold for use in that same region. You can't mix and match a cartridge sold for use in Latin America with a printer sold for use in North [16] America. If you try to do that, the cartridge won't work.

Lexmark does this to protect against grey market supplies and counterfeit products. By "grey market," we mean there may be situations where Lexmark has to do special bid pricing in one area of the world for one customer for some specific reason. They can't have that vendor then siphoning off product and shipping it to another area of the world. It causes problems.

It also opens up then channels. If they are doing that, it opens up channels through which counterfeit or fake or clone products can be channelled to an inappropriate venue.

So all this information is publicly available, publicly available on the Internet, and Lexmark's remanufacturers are well aware of it.

Here is one example. Region 4, which we have highlighted, which I'm going to touch our screen here to play, Region 4, that's Latin America. If you sell a cartridge into Latin America, then you try to import that cartridge into the United States, it won't work. It won't work in a U.S. printer.

It's known by Print After Print. Print After Print is the largest supplie says that they know that cartridges ending with ıe suffix L in the part number are for Latin America, and that prevents the cartridge -- the chip on the cartridge then prevents the cartridge from being used with printers in other areas of the world.

[Page 17 – 23 omitted]

[24] suffix A, right there (indicating). That suffix A means North America. It corresponds to the Region 1 that we saw and the earlier chart.

Then we have this Lexmark serial number over here (indicating). That's a distinct serial number that Lexmark uses to track its cartridges.

All this information was concealed or destroyed. None of it was kept.

So what do we think you're going to hear from IJSS? What do we think that they are going to say? You're going to hear a series of excuses.

The first one probably is: Lexmark made me do it.

They're going to say Lexmark sent a letter to Mr. Sherman, Print After Print, in December of 2010. In that letter, Lexmark told Print After Print that it had a series of federal trademarks and it didn't want its trademarks to remain on any products that Print After Print was selling. Lexmark didn't want any consumers to be confused by the products that IJSS or Print After Print was selling. If there is a bad product and it's got a Lexmark trademark on it, the customer is going to assume, "Well, that was Lexmark. They gave me a bad product." So Lexmark asked them to not have any trademarks appear on the products that they were selling.

The letter never told Print After Print to destroy serial numbers. It never told them to destroy the chips. It never

[Page 25 – 38 omitted]

[39] THE COURT: Thank you.

Counsel.

MR. LOY: Thank you, Your Honor. May it please the Court.

ANDREW GARDNER

a witness herein, testified as follows:

DIRECT EXAMINATION

BY MR. LOY:

Q. Andrew, could you give the Court a sense of post-secondary degrees that you hold.

A. I have a bachelor's degree from Miami University, and I have a master's degree from Baldwin Wallace College.

Q. Okay. And when did your employment with Lexmark begin?

A. Started working for Lexmark in May of 1997.

Q. And what's your current position at Lexmark?

A. Current position is Worldwide Brand Protection Manager. I have responsibility for our corporate Anti-Counterfeit Grey Market Diversion and Supplies Intellectual Property programs.

Q. So as part of your job do you help enforce Lexmark's intellectual property rights?

A. I do, yes.

Q. Thank you. And how long have you had that particular position?

A. Since 2004.

Q. Okay. Now, if you could, for the Court, on a fairly [40] general level describe Lexmark's business.

A. Lexmark is primarily a printer manufacturer. Up until last year we manufactured ink jet printers and laser printers and the supplies that go with them. Last year we exited the ink jet business and now solely concentrate on the laser printer business. We have the -- we are one of the few printer companies that actually owns and develops its own laser printer engine technologies. The research and development for this is done in Lexington, so the prime thrust would be the laser printer market.

Q. Okay. How much does Lexmark on an annual basis typically invest in its research and development?

A. It's between three- and 400 million dollars per year.

Q. I think you heard in Mr. Meece's opening he referenced some awards that Lexmark has received for its technology. Could you give the Court a sense of the types and the number of awards Lexmark has received?

A. The awards we have received are from third-party evaluators such as *Buyers Lab, PC Magazine, Computer Magazine.* These awards are for the monochrome laser printers that we manufacture, awards that show, you know, that the printers perform very well in commercial and business environments.

Q. By monochrome, you are referring to --

MR. HOKANSON: Objection. Leading.

A. Monochrome --

[41] THE COURT: It's a preliminary type of question, so -- there is no jury here, so overruled.

A. Monochrome printing, just -- printers that print just black as opposed to a color printer that print in color.

Q. Thank you. Does Lexmark obtain intellectual property rights on its technology.

A. We do. We have many patents on our printer engines, our printer technologies, as well as the cartridges that are used in tandem with those.

Q. And how important is Lexmark's intellectual property rights?

A. Without the intellectual property rights, you know, it would be very, very difficult for us to continue. You know, as was stated earlier, a vast a majority of the company's profits and revenue came from the sale of the patented printer cartridges.

Q. Lexmark produces, I think you testified, new cartridges. Does Lexmark also remanufacture its own cartridges?

A. We do. We have a -- our cartridge manufacturing facility in Juarez, Mexico, where we make new cartridges is also the location where we remanufacture cartridges. We have a cartridge collection program. These cartridges come from our customers. These are then taken to the facility in Juarez, Mexico. They are sorted, they are remanufactured to the same standards that we would use for manufacturing a new cartridge. [42] They use the same toner in the remanufactured cartridges that we use in the new cartridges, and then those are then sold to corporate customers who have a need for a cartridge at a slightly better price. Since the cartridge housing, the empty cartridge, is reused, we can then offer that at a slightly better price to a corporate user who, you

know, perhaps in a warehouse environment or in a retail planogram environment where they are willing to accept a few tradeoffs versus a brand-new cartridge from Lexmark.

Q. What about cartridges or cartridge parts that cannot be remanufactured, what do you do with those?

A. Cartridges or cartridge parts that are not remanufactured, those are recycled into their component parts so that the plastics are ground up and sold as plastic waste. The metals are recycled and sold as metal waste so they can be turned into new things.

Q. Are there particular areas or channels where Lexmark has had success against its competitors?

A. One of the best markets for us as we look at, you know, vertical markets for our monochrome laser business has been the retail pharmacy market. We have better than 90 percent market share in the retail pharmacy market, and this is because of the printers' capabilities to print labels. One of the benefits of owning our own technology is that we can, you know, adjust the engine parameters, the fuser temperatures to

[Pages 43 – 45 omitted]

[46] 1720 printer would be the same or equivalent to the Lexmark E250 printer and printer cartridge.

Q. Thank you.

THE COURT: Steve, is this an agreed exhibit or one that's not?

MR. LOY: This is one of the exhibits that was not objected to, so it's been entered into the record.

THE COURT: Okay. Just do me a favor. Just re-introduce and we'll just say Agreed Exhibit 44 so that I know if there is one that we have to have a conversation about.

MR. LOY: Thank you, Your Honor. I will do that.

THE COURT: Okay. Thank you.

Q. Could you describe for the Court what the remanufacturing industry is, what it does?

A. The remanufacturing industry exists to -- they collect empty cartridges from our customers. They purchase empty cartridges from cartridge brokers. They then get the cartridges, they replace the toner, and they will replace the microchip. They will put a different label on the cartridge, put it in a box and then resell that through a variety of venues to customers who have a printer that would use a remanufactured cartridge.

Q. Okay. Are you familiar with the term "virgin core"?

A. I am. A virgin core or a virgin empty is a toner [47] cartridge that has been used once by a customer. A virgin core is a cartridge that has -- the first use was the customer using the, in this situation, a

Lexmark-branded cartridge. Then once that cartridge gets consumed, it then gets either recycled by the consumer or collected by a cartridge broker.

Virgin cores or virgin empties are the preferred cartridges that remanufacturers like to use because the cartridge has not been remanufactured previously. Therefore, they know that the structure of the cartridge is whole and has not been modified in any way.

Q. So they are more valuable than cartridges that have been reused multiple times?

A. That is correct.

Q. Okay. Have you -- talk about the variation in quality between Lexmark-remanufactured cartridges and third-party-remanufactured cartridges and if you see any variation in the quality among third-party remanufacturers.

A. Lexmark-remanufactured cartridges are made to very high standards in the same facility where we make new cartridges. The same technicians who build our new cartridges may one day during the manufacturing process be tasked to build remanufactured cartridges. So the same people, the same level of expertise to build a new cartridge is used to build a remanufactured cartridge.

The toner that goes into our cartridges, both new and [48] remanufactured, is built, but the toner is built, created by us, by Lexmark, in its facility in Boulder, Colorado. The toners vary depending on the different printer model. Printers that print at a high rate of speed have a toner that melts at a different temperature. The fuser operates at a different temperature because the toner needs to be affixed to the

page very quickly as opposed to a printer that prints at a lower speed so that the temperature of the fuser can be lower.

So we do have a lot of different steps and a lot of different criteria that go into building a quality remanufactured cartridge.

Many remanufacturers will simply collect empty

--

MR. HOKANSON: Objection. Lack of personal knowledge. Speculation.

THE COURT: Well, set the foundation. He's talking about industry-wide standards, so set a foundation.

Q. Andrew, in your position at Lexmark do you familiarize yourself with the remanufacturing industry?

A. I do. I've been to many remanufacturing conferences, attended both in the O.S. and overseas. I'm quite familiar with the process used that remanufacturers use to build and sell remanufactured toner cartridges.

Q. Go ahead.

A. So a remanufacturer will collect an empty cartridge, they will clean the cartridge, they will replace the toner, they [49] will replace the microchip and then, again, sell that. We do see a wide variety of quality offered for sale. We do third-party testing of toner cartridges, so we will buy samples of remanufactured toner cartridges and send them to a third-party company for testing.

Some of these cartridges are what we would term or what the testing company refers to as DOA or

Dead On Arrival. These cartridges would not work out of the box. Quite often, you know, these are cartridges where they open the box, they open the bag and there is toner leaking out of the cartridge. Seals have not been replaced or seals have worn, and the cartridges will leak toner.

Some of the remanufactured cartridges are quite good, but there is a large variation in the quality of remanufactured cartridges.

Q. Do remanufacturers typically alter the structure of the cartridge?

A. No.

Q. Because it wouldn't work?

A. It wouldn't work.

Q. Okay. You talked about some of the variations in quality among the third-party remanufactured cartridges. Why does Lexmark care? It's not you that remanufactured the cartridge.

A. That is true, we did not remanufacture the cartridge. However, it is our printer. It's our printer customer. If a [50] customer has a quality issue with a cartridge and they are unable to determine what brand the cartridge is or where the cartridge came from, they are most likely to pick up the phone, call Lexmark and say, "I've got one of your printers. The cartridge leaked into my printer. My printer won't work. The cartridge damaged the fuser, and now my printer won't work."

And then at that point Lexmark will have to repair the printer, so we would bear the warranty cost for the printer repair.

If this is a repeated issue where the customer has many issues with the quality of the cartridges, when it comes time to replace that printer, you know, they may, you know, decide to look elsewhere. So there is a possible loss of goodwill in addition by the repeated failure of the cartridges where the customer doesn't know the original remanufacturer or manufacturer of that cartridge.

Q. In your position have you seen remanufactured cartridges that were first sold by Lexmark in other countries make their way into the U.S.?

A. Yes, I have.

Q. Is that a common practice?

A. It is, yes.

Q. And does Lexmark care about that?

A. We do care. Cartridges first sold outside the United

[Pages 51 – 61 omitted]

[62] Mr. Meece in his opening referred to geographic designations. Could you describe for the Court Lexmark's geographic designations maybe before you get into this cartridge?

A. Okay. For printers launched by Lexmark post 2005, we introduced a regionalization program that allows us to separate the globe into various parts. But for marketing purposes, it also helps us enforce our grey market regionalization program.

So the chip on the cartridge provides the differentiation. The part number on the cartridge, the suffix for cartridges sold in North America with the letter A; if a cartridge is sold in Latin America, it would be a letter L; E for Europe, Middle East, Africa; and either P or R for Asian-Pacific market.

MR. LOY: This is Exhibit A4. It's agreed, Your Honor.

THE COURT: Okay. Is this the same as the slide presentation?

MR. LOY: It's the same as the slide presentation. Mr. Gardner can tell you some of the more detailed information.

THE COURT: Do we need to repeat all this?

MR. HOKANSON: No.

THE COURT: I mean, I got it, so I don't know --

[Pages 63 – 74 omitted]

[75] A. The serial number has been removed, and the original Lexmark microchip has been replaced.

Q. While you're examining this, does Lexmark derive most of its profit from the printers or the cartridges?

A. From the cartridges.

Q. Okay.

A. This is box Exhibit 26. This is again for a Lexmark E321 printer. This is not a Lexmark box.

This is cartridge Exhibit 27. This is the tape that had covered the original Lexmark label. As we can see, the original Lexmark label is still present. 12a7405 is the original Lexmark part number. This, again, is for a printer that was introduced before our regionalization program. The original Lexmark serial number has been removed. There is a third party or somebody else's serial number on the bottom of the cartridge, and the original Lexmark microchip has been replaced.

Q. Like the other cartridges, if you had either that microchip or the serial number could you determine where this was first sold?

A. Yes.

Q. And like the first cartridge for both this cartridge and the one previously that we looked at, do you have a sense of when they were manufactured by Lexmark?

A. If we had the serial number, we could tell exactly.

[Pages 76 – 94 omitted]

[95] MR. MEECE: Yes.

THE COURT: Anything else, Lindsay?

MS . POTRAFKE: I don' t think so.

MR. MEECE: Thank you.

THE COURT: Thanks, guys.

MR. KERN: Thank you, Your Honor.

MR. HOKANSON: Thank you, Your Honor.

COURTROOM DEPUTY: This court is now adjourned.

(The proceedings concluded at 5:20 p.m.)

CERTIFICATE

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

S/MARYANN T. MAFFIA, RDR

Official Court Reporter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

LEXMARK INTERNATIONAL, INC.
Plaintiff,
v.
INK TECHNOLOGIES PRINTER SUPPLIES, LLC, ET AL.
Defendants.
Civil Action No.
1:10-CV-564-MRB

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lexmark International Inc. ("Lexmark") for its second amended complaint against Defendants Blue Trading LLC; Core Servicios Informaticos S.I.; Direct Billing International Incorporated d/b/a Office Supply Outfitters; Eco Service China Ltd.; Eco Service Sp. z o.o.; Enviro Green Technologies; Exprint International, Inc.; FBA Holding, Inc. d/b/a Core Recovery Company, Unitone Imaging Supply, Unitone Imaging Group, Martek Supply Source, Imcopex America, Velox Systems, Inc., and International Digital Solutions; Green Project, Inc.; Hock Group LLC d/b/a ProfessorInk.com; Impression Products, Inc.; Interseroh Product Cycle GmbH; LD Products, Inc. d/b/a 4inkjets.com, Monstertoner.com, Inkcartridges.com, Inkcartridge.com, and 123inkjets.com; LTS Consumables, Inc.; MBC Trading, Inc.; N & L Global Co. d/b/a N & L Global Corporation; NGS S.A.; Onlinetechstores.com, Inc. d/b/a

Supplierswholesalers.com; OW Supplies Corp. d/b/a www.officewarehousesupplies.com; Prinko Image Co. (USA), Inc.; Recyca BVBA; Refiltoner; Shanghai Orink Infotech International Co., Ltd.; Sinotime Technologies, Inc. d/b/a 2Stoner.com; Tech Optics, Inc.; Tesen Development (Hong Kong) Co. Ltd.; TonerLand; Zhuhai Aicon Image Co., Ltd.; and Zhuhai Richeng Development Co., Ltd., states as follows:

NATURE OF CASE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and particularly 35 U.S.C. §§ 271 and 281.

2. A parallel complaint in the United States International Trade Commission ("ITC") for an investigation under Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, was contemporaneously filed with Lexmark's original complaint in this action based upon the unlawful importation into the United States, the sale for importation and/or the sale within the United States after importation, of unauthorized, aftermarket toner cartridges, which are complained of herein, for use with Lexmark printers. *In the Matter of Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740 (International Trade Commission).

3. On September 27, 2011, the ITC determined that the Respondents identified in the ITC complaint (*i.e.*, the Defendants named in Lexmark's original complaint in this action) infringed Lexmark's patents. (Exhibit 1). The ITC entered a General Exclusion Order prohibiting, *inter alia*, the importation of toner cartridges and components thereof that are

covered by one or more of Lexmark's asserted patent claims. (Exhibit 2). The ITC also entered Cease and Desist Orders prohibiting the Defendants named in Lexmark's original complaint from importing, making, advertising, distributing, and transferring toner cartridges and components thereof that are covered by one or more of Lexmark's asserted patent claims. (*Id.*).

4. Since the filing of Lexmark's original complaint in this action, the Court has entered Stipulated Permanent Injunction Orders against the Defendants named in the original complaint, certain of the Defendants named in the first amended complaint, as well as numerous John Doe Defendants. (*See* D.E. 85, 87, 90, 91, 93, 96, 97, 100, 101, 103, 105, 114, 122, 129-134, 146-152, 157-159, 164, 176-181, 184, 185, 188, 189, 194-196, 199-201, 212, 214, 227, 280, 281, 297, 304, 350, 351, 358-361, 411, 417). The Stipulated Injunction Orders prohibit, *inter alia*, the manufacture, use, sale, offer for sale or importation into the United States toner cartridges that infringe Lexmark's asserted patent claims. (*See id.*).

THE PARTIES

Plaintiff – Lexmark International Inc.

5. Lexmark is a Delaware corporation with its principal place of business in Lexington, KY. Lexmark is a leading worldwide developer, manufacturer, and supplier, of *inter alia*, of laser printers and toner cartridges.

6. Lexmark develops and owns most of the technology for its laser printers and associated supplies. This differentiates Lexmark from a number of its major competitors.

7. Lexmark's research and development activity for the past several years has focused on, *inter alia*, laser printers and printer supplies. The process of developing new technology products is complex and requires innovative designs that anticipate customer needs and technological trends. Lexmark's research and development expenditures were $375 million in 2009, $423 million in 2008, $401 million in 2007, $371 million in 2006, $336 million in 2005, $312 million in 2004, $266 million in 2003, $247 million in 2002, $246 million in 2001, $217 million in 2000, and $184 million in 1999.

8. Over the years, Lexmark has developed numerous models of monochrome laser printers, including the E120, E220, E230, E232, E234, E238, E240, E250, E260, E320, E322, E321, E323, E330, E332, E340, E342, E350, E352, E360, E450, E460, E460, T520, T522, X520, X522, T610, T612, T614, T616, T620, T622, X620, T630, T632, T634, T640, T642, T644, T650, T652, T654, T656, X650, X651, X652, X653, X654, X655, and X656 series printers, and the equivalent monochrome laser printers sold under private label, including the Dell 1700, Dell 1700N, Dell 1710, Dell 1720, Dell 2230, Dell 2330, Dell 235 Technologies 0, Dell 3330, Dell 3333, Dell 3335, Dell 5200, Dell 5210, Dell 5300, Dell 5310, Dell 5230, Dell 5350, Dell 5530, Dell 5535, Dell E220, IBM 1116, IBM 1312, IBM 1412, IBM 1512, IBM 1512N, IBM infoPrint 1120, IBM InfoPrint 1125, IBM Infoprint 1130, IBM Infoprint 1140, IBM InfoPrint 1332, IBM Infoprint 1352, IBM Infoprint 1372, IBM InfoPrint 1532, IBM Infoprint 1552, IBM Infoprint 1572, IBM Infoprint 1832, IBM Infoprint 1850, IBM Infoprint 1852, IBM Infoprint 1860, IBM Infoprint 1870, IBM Infoprint 1872, IBM Infoprint 1880, IBM Infoprint 1892, InfoPrint 1601, InfoPrint 1602, InfoPrint 1612,

InfoPrint 1622, Infoprint 1822, IBM Infoprint 1823, IBM Infoprint 1930, IBM Infoprint 1940, Lenovo LI3900, LG 3510, LG 3350, LG 3850, LG 4010, Nashuatec P6220, Nashuatec P6225, Nashuatec P6230, Nashuatec 6240, Okidata MB780, Okidata MB790, Okidata 5500, Okidata 7180, Okidata 7190, Ricoh Afficio SP 4400, Ricoh Afficio SP 4410, Ricoh Afficio SP 4420, Sindoricoh 5000, Sindoricoh 5005, Sindoricoh 5050, Sindoricoh 4450, Sindoricoh 4550, Sindoricoh 4555, Sindoricoh 5450, Sindoricoh 5550, Source Technologies 9116, Source Technologies 9130, Source Technologies 9140, Source Technologies 9325, Source Technologies 9335, Source Technologies 9340, Source Technologies 9530n, Source Technologies 9550, Source Technologies 9552, Source Technologies 9630, Source Technologies 9650, Source Technologies 9620, Source Technologies 9622, Source Technologies ST 9120, Source Technologies 9125, Toshiba e-Studio 20P, Toshiba e-Studio 25P, Toshiba e-Studio 30P, Toshiba e-Studio 40P, Toshiba e-Studio 400P, Toshiba e-Studio430, Toshiba e-Studio 530, Toshiba e-Studio 450P, Toshiba e-Studio 500P, Toshiba e-Studio 500P, Unisys 134, Unisys 136, Unisys UDS 130, Unisys UDS 132, Unisys UDS 640n, Unisys UDS 650n, Unisys UDS 140, Unisys UDS 142, Unisys UDS 540n, Unisys UDS 544n, Unisys UDS 630, Unisys UDS 635dn series printers.[1] In addition, Lexmark has designed and developed toner cartridges for each of these laser printer models and equivalents sold under private label.

9. Lexmark is the assignee and owner of a number of United States patents that cover various as-

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[1] Exhibit 3 attached hereto is a chart identifying which laser printer models sold under private label are equivalent to Lexmark's laser printer models.

pects of its toner cartridges including, for example, the "Patents-in-Suit," which are set forth below. True and correct copies of the Patents-in-Suit are attached as Exhibits 4 - 24.

United States Pat. No.	Title	Exhibit
5,337,032 ("the '032 Patent")	Reduced Component Toner Cartridge	4
5,634,169 ("the '169 Patent")	Multiple Function Encoder Wheel For Cartridges Utilized In An Electrophotographic Output Device	5
5,758,231 ("the '231 Patent")	Venting Plug In Toner Cartridge	6
5,758,233 ("the '233 Patent")	Toner Cartridge With Locating [Surfaces] On Photoconductor Shaft	7
5,768,661 ("the '661 Patent")	Toner Cartridge With External Planar Installation Guides	8
5,802,432 ("the '432 Patent'")	Toner Cartridge with Housing and Pin Construction	9
5,875,378 ("the '378 Patent")	Toner Cartridge With Hopper Exit Agitator	10
5,995,772 ("the '772 Pa-	Imaging Apparatus Cartridge Including An	11

United States Pat. No.	Title	Exhibit
tent")	Encoded Device	
6,009,291 ("the '291 Patent")	Control Of Photosensitive Roller Movement	12
6,078,771 ("the '771 Patent")	Low Friction Doctor Blade	13
6,397,015 ("the '015 Patent")	Encoded Device Having Positioned Indicia For Use With A Toner Cartridge	14
6,459,876 ("the '876 Patent")	Toner Cartridge	15
6,487,383 ("the '383 Patent")	Dynamic End-Seal For Toner Development Unit	16
6,496,662 ("the '662 Patent")	Optical Toner Low Sensor	17
6,678,489 ("the '489 Patent")	Two Part Cartridges With Force Biasing By Printer	18
6,816,692 ("the '692 Patent")	Support Assembly For Roller Including Roller Body And Support Shaft	19
6,871,031 ("the '031 Pa-	Coupling Mechanism For A Two Piece Print-	20

United States Pat. No.	Title	Exhibit
tent")	er Cartridge	
6,879,792 ("the '792 Patent")	Two Part Cartridges With Force Biasing By Printer	21
7,139,510 ("the '510 Patent")	Two Part Cartridges With Force Biasing By Printer	22
7,233,760 ("the '760 Patent")	Method and Device for Doctor Blade Retention	23
7,305,204 ("the '204 Patent")	Two Part Cartridges With Force Biasing By Printer	24

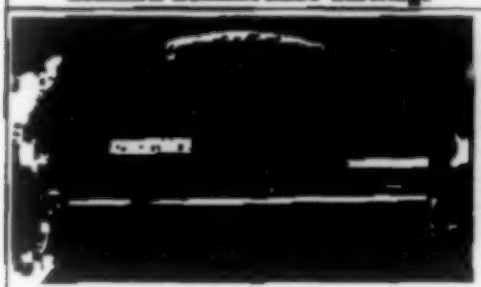
10. The Patents-In-Suit are valid and enforceable. In fact, myriad Defendants and John Doe Defendants have expressly agreed to the validity and enforceability of the Patents-in-Suit in court filings, public statements, and confidential settlement agreements.

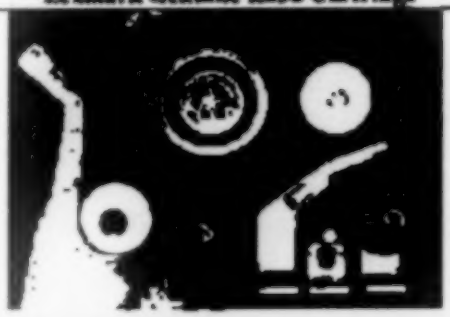
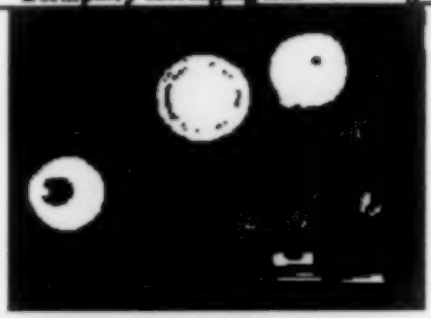
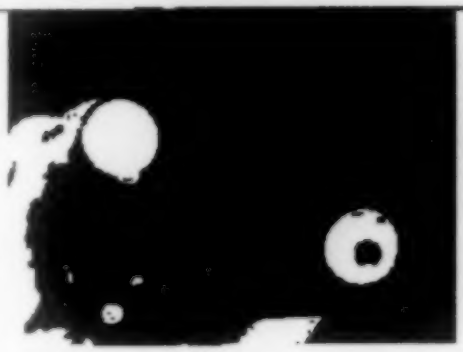
Defendants Generally

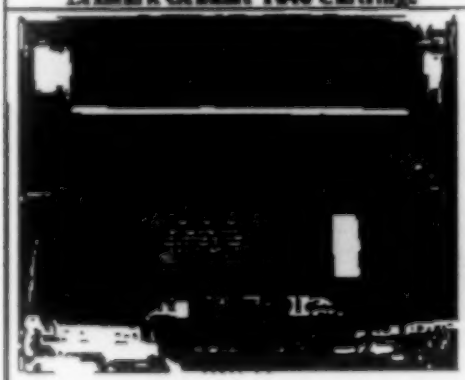
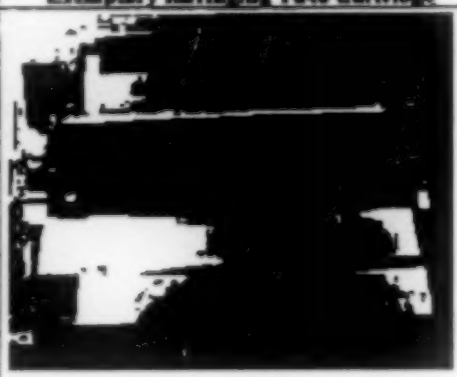
11. Defendants remanufacture, manufacture, sell for importation, import, distribute, offer to sell, and/or sell unauthorized aftermarket toner cartridges, developer assemblies, and photoconductor assemblies that are intended as substitutes for use with one or more of Lexmark's E120, E220, E230, E232, E234, E238, E240, E250, E260, E320, E322, E321, E323, E330, E332, E340, E342, E350, E352, E360, E450, E460, E460, T520, T522, X520, X522, T610, T612, T614, T616, T620, T622, X620, T630, T632, T634, T640, T642, T644, T650, T652, T654,

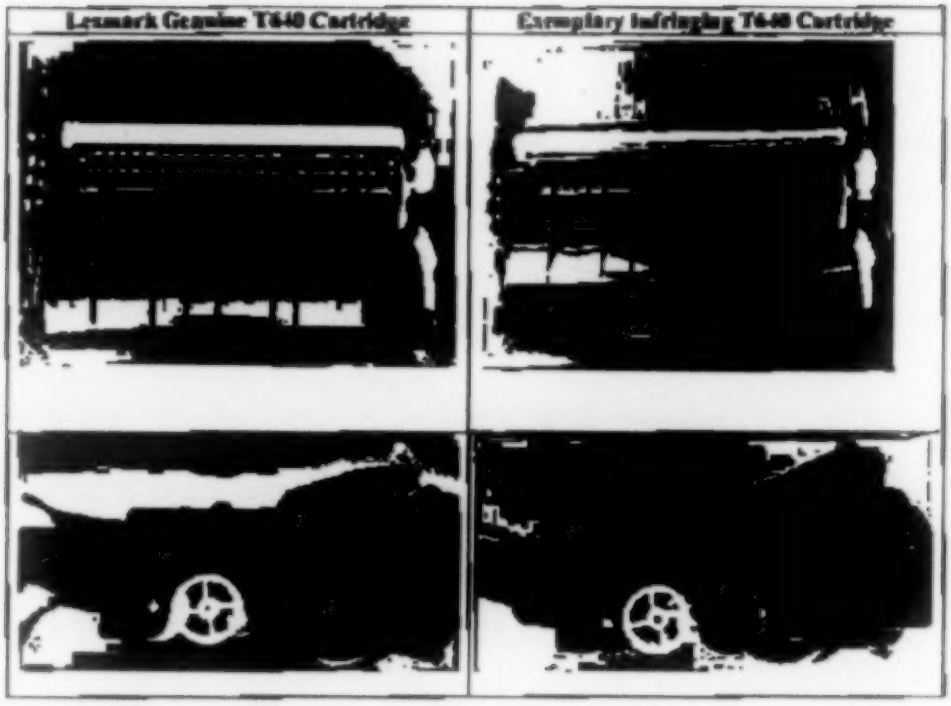
T656, X650, X651, X652, X653, X654, X655, and/or X656 laser printer series and the equivalent laser printer models sold under private label identified in Paragraph 8 above and in Exhibit 3, including clones as well as remanufactured versions of these cartridges and assemblies that originally were first sold outside of the United States (collectively, "the Accused Cartridges").

12. The clone and remanufactured versions of these Accused Cartridges have the same patented components as Lexmark's original, patented components. This can be seen, for example, by the following exemplary side-by-side comparison of Lexmark's patented E250 cartridge to an exemplary infringing E250 cartridge, and side-by-side comparison of Lexmark's patented T640 cartridge to an exemplary infringing T640 cartridge:

Lexmark Genuine E250 Cartridge	Exemplary Infringing E250 Cartridge
	

Lexmark Genuine E250 Cartridge	Exemplary Infringing E250 Cartridge
	
	

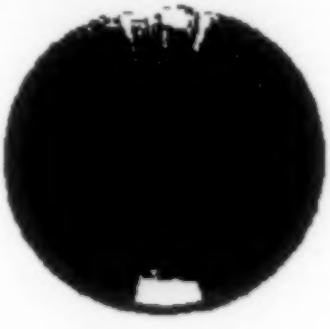
Lexmark Genuine T640 Cartridge	Exemplary Infringing T640 Cartridge
	



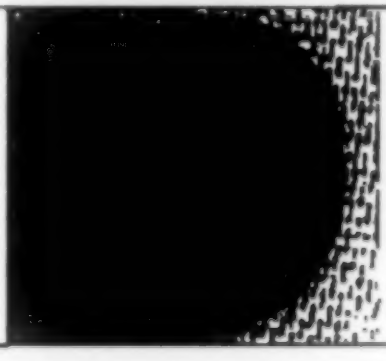
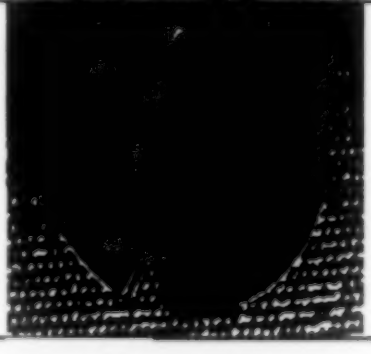
13. The clone cartridges are mere copies of Lexmark's genuine toner cartridges and for a particular model and blatantly duplicate the components of Lexmark's patented toner cartridges. Likewise, the remanufactured cartridges first sold outside the United States are, in all relevant respects, identical to Lexmark's patented toner cartridges. In other words, the remanufactured versions continue to practice Lexmark's patents just as when those cartridges were originally manufactured and sold by Lexmark.

14. For example, this can be seen by the below side-by-side comparison of Lexmark's patented encoder wheels, disclosed and claimed in Lexmark's '015 patent, to encoder wheels taken from infringing cartridges.

Lexmark Patented Encoder Wheel	Encoder Wheel Taken From An Exemplary Infringing Cartridge

Lexmark Patented Encoder Wheel	Encoder Wheel Taken From An Exemplary Infringing Cartridge
	

15. Similarly, below is a side-by-side comparison of Lexmark's patented roller bearing, disclosed and claimed in Lexmark's '692 patent, to a roller bearing from an infringing cartridge.

Lexmark Patented Roller Bearing	Roller Bearing Taken From An Exemplary Infringing Cartridge
	

16. The table set forth below identifies which patent claims are infringed by which Accused Cartridges.

Lexmark's Patents	Toner Cartridges						
	E120	E23X/E24X/ E33X/E34X	E260/ E360/E460	E25X/ E35X/E45X	T52X/T61X/ T62X/T63X/ T64X/T65X	E320/ E322	E220 and E321/E323
5,337,882					1,5,6		
5,634,169			32,36,42		1-3,32-34, 36,42	32,36,42	32,36,42
5,758,151		1-16	1-16	1-16		1-16	1-16
5,758,233					1-4		
5,768,661					1,2,3,6		
5,802,432					1-3, 7-9		
5,875,378					1-3,12-14,24		
5,995,772			14,15,22, 33-34		1-3,5,7-9, 12,14-18,20,21	14,15,22, 32-34	14,15,22, 32-34
6,009,291	1-2	1-2	1-2	1-2	1-2		
6,078,771	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,2,5,6,10, 12,13,15		
6,307,015			1,2,4, 9,17,19		1-4,7-12, 14-19,22-24	1,2,4, 9,17,19	1,2,4, 9,17,19
6,450,876					1-28		
6,487,383	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6,10, 11,15,19	19	19
6,496,662		1,3,5,7		1,3,5,7			
6,678,489		5, 6	5, 6	5, 6			
6,816,692	1-13	1-13	1-13	1-13			
6,871,051		1-6,8-12	1-6,8-12	1-6,8-12			
6,978,702		1-11	1-11	1-11			
7,139,510		1-10	1-10	1-10			
7,233,760	1-10, 11,12,14	1-10, 11,12,14	1-10, 11,12,14	1-10, 11,12,14			

Lexmark's Patents	Toner Cartridges						
	E120	E23X/E24X/ E33X/E34X	E260/ E360/E460	E25X/ E35X/E45X	T52X/T61X/ T62X/T63X/ T64X/T65X	E320/ E322	E220 and E321/E323
7,305,204		1-20	1-20	1-8,10-13			

Defendants Specifically

17. Lexmark's investigation and discovery of the unauthorized remanufacture, importation, distribution, offers for sale, and/or sale of the Accused Cartridges continues. For example, Lexmark currently has subpoenas to several potential Defendants now pending that seek documents and deposition discovery regarding their unauthorized remanufacture,

importation, distribution, offers for sale, and/or sale of the Accused Cartridges. Upon completion of such discovery, Lexmark may identify additional Defendants in the present case. In the meantime, Lexmark is aware of at least the Defendants identified below.

18. On information and belief, Defendant Blue Trading LLC ("Blue Trading") is a corporation organized under the laws of Florida having a principal place of business located at 9272 NW 101st Street, Medley, FL 33178. On information and belief, Blue Trading operates a website htpp://www.blue tradingus.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.bluetradingus.com.

19. On information and belief, Defendant Core Servicios Informaticos S.I. ("Core Servicios") is corporation organized under the laws of Spain having a principal place of business located at Calle Resina, 29 Nave D, 28021 Madrid, Spain. On information and belief, Core Servicios operates a website http://www.core-global.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.core-global.com. On information and belief, Core Servicios has imported Accused Cartridges into the United States for sale to other Defendants.

20. On information and belief, Defendant Direct Billing International Incorporated ("Direct Billing") is a corporation organized under the laws of California with a principal place of business at 5910 Sea Lion Place, Suite 100, Carlsbad, CA 92010, and further address at P.O. Box 2789, Carlsbad, CA 92018. On information and belief, Direct Billing does business

as Office Supply Outfitters, and operates a website at http://www.officesupplyoutfitters.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the websites http://www.officesupplyoutfitters.com.

21. On information and belief, Defendant Eco Service China Ltd. ("Eco Service China") is a corporation organized under the laws of China having a principal place of business at Room A, 9th Floor, Queen's Centre, 58-64 Queen's Road East, Wan Chai, Hong Kong. On information and belief, Eco Service China has imported Accused Cartridges into the United States for sale to other Defendants.

22. On information and belief, Defendant Eco Service Sp. z o.o. ("Eco Service Poland") is a foreign corporation having a principal place of business at ul. Atramentowa 5, Bielany Wroclawskie, 55-040 KOBIERZYCE, Poland. On information and belief, Eco Service Poland is affiliated with and/or does business as Eco Service China. On information and belief, Eco Service Poland has imported Accused Cartridges into the United States for sale to other Defendants.

23. On information and belief, Defendant Enviro Green Technologies is a corporation organized under the laws of South Africa having a principal place of business located at 3 Roper Street, Unit D, Johannesburg, South Africa. On information and belief, Enviro Green Technologies has imported Accused Cartridges into the United States for sale to other Defendants.

24. On information and belief, Defendant Exprint International, Inc. is a corporation organized under the laws of California having a principal place of

business located at 20515 E Walnut Drive N, Unit C3, Walnut, CA 91789. On information and belief, Exprint International, Inc. operates a website http://www.exprintinc.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.exprintinc.com.

25. On information and belief, Defendant FBA Holding, Inc. is a corporation organized under the laws of Florida having its principal place of business located at 200 Fentress Boulevard, Suite B, Daytona Beach, FL 32114. FBA Holding, Inc. does business under several names, including Core Recovery Company, Unitone Imaging Supply, Unitone Imaging Group, Martek Supply Source, Imcopex America, Velox Systems, Inc. and International Digital Solutions (collectively "FBA Holding"). On information and belief, FBA Holding operates several websites, including http//www. corerecovery.com., http:// www.ununitone.com, http://www.martekonline.com, http://www.imcopexmarerica.com, and www. idscopier.com, all of which are accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the websites http://www.corerecovery.com, http://www.unitone. com, http://www.martekonline.com, http://www.imco pexmarerica.com, and www.idscopier.com.

26. On information and belief, Defendant Green Project, Inc. ("Green Project") is a corporation organized under the laws of California having a principal place of business located at 15335 Don Julian Rd, Hacienda Heights, CA 91745. On information and belief, Green Project operates a website http://www.greenprojectinc.com, which is accessible in this judicial district. On information and belief,

the Accused Cartridges are offered for sale on the website http://www.greenprojectinc.com.

27. On information and belief, Defendant Hock Group LLC d/b/a ProfessorInk.com ("Hock Group") is a corporation organized under the laws of Indiana having a principal place of business located at 9505 Marquis Lane, For Wayne, Indiana 46835. On information and belief, Hock Group operates a website, www.professorink.com, which is accessible in this judicial district. On information and belief, Hock Group offers for sale and sells the Accused Cartridges.

28. On information and belief, Defendant Impression Products, Inc. is a corporation organized under the laws of West Virginia having a principal place of business located at 129 Dutch Road, Charleston, WV 25302. On information and belief, Impression Products, Inc. operates a website http://www.charlestonprinterservice.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.charleston printer.com.

29. On information and belief, Defendant Interseroh Product Cycle GmbH ("Interseroh") is a corporation organized under the laws of Germany having a principal place of business at Ackerstraße 60, 49084 Osnabrück, Germany. On information and belief, Interseroh Product Cycle GmbH operates a website http://www.interseroh.de/en, which is accessible in this judicial district. On information and belief, Interseroh has imported Accused Cartridges into the United States for sale to other Defendants.

30. On information and belief, Defendant LD Products, Inc. d/b/a 4inkjets.com, Monstertoner.com, Inkcartridges.com, Inkcartridge.com, and 123inkjets.com is a corporation organized under the laws of California having a principal place of business located at 3700 Cover Street, Long Beach, CA 90808. On information and belief, LD Products, Inc. operates websites http://www.ldproducts.com, www.4inkjets.com, http://www.monstertoners.com, http://www.inkcartridges.com, http://www.inkcartridge.com, and http://www.123inkjets.com, all of which are accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the websites http://www.ldproducts.com, www.4inkjets.com, http://www.monstertoners.com, http://www.inkcartridges.com, http://www.inkcartridge.com, and http://www. 123inkjets.com.

31. On information and belief, Defendant LTS Consumables, Inc. ("LTS Consumables") is a corporation organized under the laws of California having a principal place of business located at 15306 E Valley Blvd, La Puente, CA 91746. On information and belief, LTS Consumables sells and has imported into the United States Accused Cartridges.

32. On information and belief, Defendant MBC Trading, Inc. ("MBC Trading") is a corporation organized under the laws of California having a principal place of business located at 12936 South Figueroa Street, Los Angeles, CA 90061. On information and belief, MBC Trading imports and sells Accused Cartridges.

33. On information and belief, Defendant N & L Global Co. d/b/a N & L Global Corporation ("N & L Global") is a corporation organized under the laws of California having a principal place of business locat-

ed at 2300 Peck Road, City of Industry, CA 90601. On information and belief, N & L Global operates a website, http://www.nlglobalco.com, which is accessible in this judicial district. On information and belief, N & L Global imports and sells Accused Cartridges.

34. On information and belief, Defendant NGS S.A. is a corporation organized under the laws of Chile having a principal place of business located at Avenida Cordillera 321 - C8, Quilicura, Chile. On information and belief, NGS S.A. operates a website http://www.ngschile.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.ngschile.com. On information and belief, NGS S.A. has imported Accused Cartridges into the United States for sale to other Defendants.

35. On information and belief, Defendant Onlinetechstores.com, Inc. d/b/a Supplierswholesalers.com is a corporation organized under the laws of Nevada having a principal place of business located at 1335 Greg Street, Suite 107, Sparks, NV 89431. On information and belief, Onlinetechstores.com, Inc. operates a website http://www.supplierswhole-salers.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.supplierswholesalers.com.

36. On information and belief, Defendant OW Supplies Corp. d/b/a www.officeand warehousesupplies.com ("OW Supplies") is a corporation organized under the laws of California having a principal place of business located at 2300 Peck Rd., City of Industry, California 90601. On information and belief, OW Supplies operates a website,

www.officeandwarehousesupplies.com, which is accessible in this judicial district. On information and belief, OW Supplies offers for sale and sells the Accused Cartridges.

37. On information and belief, Defendants Prinko Image Co. (USA), Inc. ("Prinko Image") is a corporation organized under the laws of California having a principal place of business located at 17907 Arenth Avenue, City of Industry, CA 91748. On information and belief, Prinko Image operates a website http://www.zhprinko.cn, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.zhprinko.cn.

38. On information and belief, Defendant Recyca BVBA is a corporation organized under the laws of Belgium having a principal place of business located at Delften 23/65, 2390 Malle, Belgium. On information and belief, Recyca BVBA operates a website http://www.recyca.be, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.recyca.bc. On information and belief, Recyca BVBA has imported Accused Cartridges into the United States for sale to other Defendants.

39. On information and belief, Defendant Refiltoner is a corporation organized under the laws of Ecuador having a principal place of business at 6 de Diciembre N23-64 Edf. Famer Piso 3, Quito, Pichincha, Ecuador. On information and belief, Refiltoner operates a website http://www.refiltoner.com, which is accessible in this judicial district. On information and belief, Refiltoner has imported Accused Cartridges into the United States for sale to other Defendants.

40. On information and belief, Defendant Shanghai Orink InfoTech International Co., Ltd. is a corporation organized under the laws of China having a principal place of business at Room 307, No. 275-8, East Guoding Road, Shanghai, China 200433. On information and belief, Shanghai Orink InfoTech International operates a website http://www.orink.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.orink.com. On information and belief, Shanghai Orink InfoTech International has imported Accused Cartridges into the United States for sale to other Defendants.

41. On information and belief, Defendant Sinotime Technologies, Inc. d/b/a 2Stoner.com ("Sinotime") is a corporation organized under the laws of Florida having a principal place of business located at 3100 NW 72nd Avenue 106, Miami, Florida 33122. On information and belief, Sinotime operates a website, www.2Stoner.com, which is accessible in this judicial district. On information and belief, Sinotime offers for sale and sells Accused Cartridges.

42. On information and belief, Defendant Tech Optics, Inc. ("Tech Optics") is a corporation organized under the laws of Florida having a principal place of business located at 10882 Southwest 188th St., Miami, FL 33157. On information and belief, Tech Optics operates a website, http://www.techoptics inc.com, which is accessible in this judicial district. On information and belief, the Accused Cartridges are offered for sale on the website http://www.techoptics.com.

43. On information and belief, Defendant Tesen Development (Hong Kong) Co. Ltd. is a corporation organized under the laws of China having a principal

place of business at Room 8, 6/F, Shun on Comm Building, 112-114 Des Voeux Road, Central Hong Kong, Hong Kong. On information and belief, Tesen Development (Hong Kong) Co. Ltd. is affiliated with and/or does business as Tesen Shongshan-Zonton Printer Accessory Co., Ltd., which has a business address at No. 5 Shagangzhong Road, Taifong Industrial Zone, Gangkou Town, Zhongshan, Guangdong, China (collectively "Tesen"). On information and belief, Tesen operates a website www.tstoner.com, which is accessible in this judicial district. On information and belief, Tesen has imported Accused Cartridges into the United States for sale to other Defendants.

44. On information and belief, Defendant TonerLand is owned by Sercomp, LLC, a California corporation having a principal place of business located at 1601 W. 190th St., Gardena, CA 90248. On information and belief, TonerLand operates a website, www.tonerland.com, which is accessible in this judicial district. On information and belief, TonerLand sells Accused Cartridges.

45. On information and belief, Defendant Zhuhai Aicon Image Co., Ltd. ("Aicon") is a corporation organized under the laws of China having a principal place of business located at Room516 Block A, Leaguer Building, Tsinghua Science Park, No.101 College Rd., 519080 Tang jia wan, Zhuhai, China. On information and belief, Aicon operates a website, www.iaicon.com, which is accessible in this judicial district. On information and belief, Aicon has imported Accused Cartridges into the United States for sale.

46. On information and belief, Defendant Zhuhai Richeng Development Co., Ltd. is a corporation or-

ganized under the laws of China having a principal place of business located at Building 6/F, No. 10, Shihua No. 3 Lane, Nanshan Industrial Zone, Zhuhai, China 519015. On information and belief, Zhuhai Richeng Development Co., Ltd. operates a website http://www.richeng.cn/en/, which is accessible in this judicial district. On information and belief, Zhuhai Richeng Development Co., Ltd. has imported Accused Cartridges into the United States for sale to other Defendants.

47. On information and belief, John Does 1-20 remanufacture, manufacture, import, distribute, offer for sale, and/or sell Accused Cartridges. Lexmark currently has subpoenas to several John Does now pending that seek documents and deposition discovery regarding their unauthorized remanufacture, importation, distribution, offers for sale, and/or sale of Accused Cartridges. Upon completion of such discovery, Lexmark may specifically identify such John Does as Defendants in the present case.

JURISDICATION AND VENUE

48. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court also has supplemental jurisdiction over Lexmark's Breach of Representation and Warranty claim in this dispute pursuant to 28 U.S.C. § 1367.

49. On information and belief, this Court has personal jurisdiction over Defendants located in the United States because they have been and/or are engaged in substantial and continuous business activities in this judicial district and/or have committed acts of infringement in this judicial district.

50. On information and belief, the Defendants have sufficient minimum contacts and are subject to personal jurisdiction in Ohio because they know that the Accused Cartridges they remanufacture, sell for importation, import, distribute, offer for sale, and/or sell enter Ohio through the stream of commerce and because they intentionally serve the United States market, including Ohio, by indirectly shipping the Accused Cartridges there. On information and belief, Defendants also operate websites that serve as channels for advertising and selling the Accused Cartridges to customers in Ohio, and/or regularly providing and receiving information and advice to and from customers in Ohio. The Accused Cartridges are easily sold over the Internet by entities, including Defendants, which have sought to mask their identities through the use of multiple corporations and fictitious business names. Even with physical presence in the United States or this judicial district, the Internet allows the entities selling the Accused Cartridges to have deep reach into the United States and this judicial district for a very low cost.

51. On information and belief, this Court has personal jurisdiction over Defendants located outside the United States under Fed. R. Civ. P. 4(k)(2), because they are not subject to jurisdiction in any state's court of general jurisdiction and exercising jurisdiction is consistent with the United States Constitution and laws.

52. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(c), 1391(d), and 1400(b).

COUNT I – PATENT INFRINGEMENT

53. Lexmark incorporates herein the allegations of paragraphs 1 through 54 above specifically by reference.

54. On information and belief, Defendants import, remanufacture, offer to sell, and/or sell after importation into the United States one or more of the Accused Cartridges and/or components thereof.

55. On information and belief, certain of the Accused Cartridges utilize the same patented technology that is found in the Lexmark genuine toner cartridges. In particular, the clone and remanufactured toner cartridges imported, sold and/or offered for sale by Defendants utilize the Patents-in-Suit that cover the same patented components found in Lexmark's genuine toner cartridges.

56. Lexmark has never licensed or permitted Defendants to practice any of the legal rights granted under the Patents-in-Suit.

57. On information and belief, Defendants' remanufacturing, importing, offering to sell, and/or selling of one or more of the Accused Cartridges and/or components thereof in the United States constitutes direct patent infringement under 35 U.S.C. § 271(a) of the '032, '169, '231, '233, '661, '432, '378, '772, '291, '771, '015, '876, '383, '662, '692, '510, '760, and/or '204 Patents.

58. On information and belief, Defendants' remanufacturing, importing, offering to sell, and/or selling of one or more of the Accused Cartridges and/or components thereof, including developer assemblies, in the United States constitutes contributory patent infringement under 35 U.S.C. § 271(c) of

the '489, '031, and/or '792 Patents. Defendants have knowledge of the '489, '031, and '792 Patents and their acts giving rise to contributory infringement.

59. On information and belief, Defendants' infringement has been, and continues to be, with full knowledge of the Patents-in-Suit and is deliberate and willful infringement thereof.

60. By reason of Defendants' infringement of the Patents-in-Suit, Defendants have caused and continue to cause Lexmark to suffer damage and irreparable harm.

61. Lexmark has no adequate remedy at law for Defendants' infringement of the Patents-in-Suit.

62. On information and belief, Defendants' infringement of the Patents-in-Suit will continue unless enjoined by this Court.

COUNT II – BREACH OF REPRESENTATION AND WARRANTY

63. Lexmark incorporates herein the allegations of paragraphs 1 through 64 above specifically by reference.

64. Lexmark entered into settlement agreements with Defendant Tech Optics relating to Tech Optics' remanufacturing, importing, offering to sell, and/or selling Accused Cartridges. The agreements required entry of Stipulated Permanent Injunction, Consent Judgment, and Dismissal With Prejudice, wherein Tech Optics expressly represented and warranted that Tech Optics "disclosed to Lexmark the quantity and type of all Accused Cartridges that it made, used, sold, offered for sale, or imported into the United States." (D.E. 195, ¶ 10).

65. Disclosure of all Accused Cartridges by Tech Optics was a condition precedent to Lexmark entering into the settlement agreement and the Stipulated Permanent Injunction, Consent Judgment, and Dismissal With Prejudice.

66. Despite knowing that disclosure of all Accused Cartridges to Lexmark was a condition precedent to settlement, Tech Optics failed to disclose thousands of Accused Cartridges to Lexmark.

67. Lexmark entered into the settlement agreement and Stipulated Permanent Injunction, Consent Judgment, and Dismissal With Prejudice based on Tech Optics' misrepresentations regarding the quantity and type of all Accused Cartridges that Tech Optics made, used, sold, offered for sale, or imported into the United States.

68. Lexmark sustained damages because of Tech Optics' breach of representation and warranty and failure to disclose all Accused Cartridges to Lexmark.

JURY DEMAND

In accordance with the Seventh Amendment of the United States Constitution, Lexmark demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Lexmark prays that:

a) Pursuant to 35 U.S.C. § 271, this Court enter judgment that the Defendants have been and are currently infringing the Patents-in-Suit;

b) Defendants, their officers, agents, servants, employees, assigns, successors in interest, and attorneys, and all those in active concert or participation

with them who received actual notice of the injunction, by personal service or otherwise, be permanently enjoined from infringing the Patents-in-Suit;

c) Defendants be directed to pay Lexmark the amount of damages that it has sustained as a result of Defendants' acts of patent infringement, and that such damages be trebled under 35 U.S.C. § 284;

d) This be declared an exceptional case under 35 U.S.C. § 285;

e) Lexmark be awarded its attorneys' fees;

f) Defendants be directed to pay an award of prejudgment interest, post-judgment interest, and costs of the suit to Lexmark;

g) This Court enter judgment against Tech Optics for breach of representation and warranty;

h) Tech Optics be directed to pay Lexmark all of its damages associated with Tech Optics' breach of representation and warranty; and

i) Lexmark be granted such other further relief as the Court may deem proper and just.

Respectfully submitted,

Dated: November 1, 2013

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION
FILED UNDER SEAL

LEXMARK INTERNATIONAL, INC.
Plaintiff,
v.
INK TECHNOLOGIES PRINTER SUPPLIES, LLC, ET AL.
Defendants.

JOINT MOTION FOR ENTRY OF STIPULATED ORDER REGARDING SUPPLEMENTATION OF RECORD, LIMITED RECONSIDERATION TO THE EXTENT NECESSARY TO PRESERVE APPELLATE RIGHTS, FOR NON-INFRINGEMENT WITH RESPECT TO TONER CARTRIDGES FIRST SOLD INSIDE THE UNITED STATES, FOR INFRINGEMENT FOR TONER CARTRIDGES FIRST SOLD OUTSIDE THE UNITED STATES, AND FOR ENTRY OF FINAL JUDGMENT

Comes the Plaintiff Lexmark International, Inc. ("Lexmark") and Defendant Impression Products, Inc. ("Impression"), by counsel, and hereby jointly move the Court for entry of a "Stipulated Order:" (a) supplementing the district court record for appellate purposes, (b) reconsidering ECF 615 *(i.e.,* the Court's Opinion and Order regarding Lexmark's Return Program) in view of the supplemented record to the extent that the Court deems it necessary, (c) subject to and without waiver of Lexmark's appellate rights, entering judgment of no infringement under 35

U.S.C. § 271(a)—based on the Court's ruling in ECF 615—in favor of Impression and against Lexmark for Impression's sales of Return Program Cartridges (defined *infra*) that were first sold *inside* the United States, (d) subject to and without waiver of Impression's appellate rights, entering judgment of infringement under 35 U.S.C. § 271(a)—based on the Court's ruling in ECF 617—in favor of Lexmark and against Impression for its sales of Toner Cartridges (defined *infra*) that were first sold *outside* the United States and (e) directing entry of final judgment under Rule 58, Fed. R. Civ. P., based on the Stipulated Order. In support thereof, Lexmark and Impression jointly stipulate and agree as follows:

Background on the Parties

1. Lexmark is in the business of developing, manufacturing and selling laser printers and toner cartridges including toner cartridges for use with monochrome laser printers, including the Lexmark E120, Lexmark E220, Lexmark E230, Lexmark E232, Lexmark E234, Lexmark E238, Lexmark E240, Lexmark E250, Lexmark E260, Lexmark E320, Lexmark E322, Lexmark E321, Lexmark E323, Lexmark E330, Lexmark E332, Lexmark E340, Lexmark E342, Lexmark E350, Lexmark E352, Lexmark E360, Lexmark E450, Lexmark E460, Lexmark T520, Lexmark T522, Lexmark X520, Lexmark X522, Lexmark T610, Lexmark T612, Lexmark T614, Lexmark T616, Lexmark T620, Lexmark T622, Lexmark X620, Lexmark T630, Lexmark T632, Lexmark T634, Lexmark T640, Lexmark T642, Lexmark T644, Lexmark T650, Lexmark T652, Lexmark T654, Lexmark T656, Lexmark X651, Lexmark X652, Lexmark X654, Lexmark X656, and the equivalent monochrome la-

ser printers sold to original equipment manufacturers under private label, including, but not limited to, the Dell 1700, Dell 1700N, Dell 1710, Dell 1720, Dell 2230, Dell 2330, Dell 2350, Dell 3330, Dell 3333, Dell 3335, Dell 5200, Dell 5210, Dell 5300, Dell 5310, Dell 5230, Dell 5350, Dell 5530, Dell 5535, Dell E220, IBM 1116, IBM 1312, IBM 1412, IBM 1512, IBM 1512N, IBM InfoPrint 1120, IBM InfoPrint 1125, IBM InfoPrint 1130, IBM InfoPrint 1140, IBM InfoPrint 1332, IBM InfoPrint 1352, IBM InfoPrint 1372, IBM InfoPrint 1532, IBM InfoPrint 1552, IBM InfoPrint 1572, IBM InfoPrint 1832, IBM InfoPrint 1850, IBM InfoPrint 1852, IBM InfoPrint 1860, IBM InfoPrint 1870, IBM InfoPrint 1872, IBM InfoPrint 1880, IBM InfoPrint 1892, InfoPrint 1601, InfoPrint 1602, InfoPrint 1612, InfoPrint 1622, InfoPrint 1822, IBM InfoPrint 1823, IBM InfoPrint 1930, IBM InfoPrint 1940, Lenovo LI3900, LG 3510, LG 3350, LG 3850, LG 4010, Okidata MB780, Okidata MB790, Okidata 5500, Okidata 7180, Okidata 7190, Ricoh Afficio SP 4400, Ricoh Afficio SP 4410, Ricoh Afficio SP 4420, Sindoricoh 5000, Sindoricoh 5005, Sindoricoh 5050, Sindoricoh 4450, Sindoricoh 4550, Sindoricoh 4555, Sindoricoh 5450, Sindoricoh 5550, Source Technologies 9116, Source Technologies 9130, Source Technologies 9140, Source Technologies 9325, Source Technologies 9335, Source Technologies 9340, Source Technologies 9530n, Source Technologies 9550, Source Technologies 9552, Source Technologies 9630, Source Technologies 9650, Source Technologies 9620, Source Technologies 9622, Source Technologies ST 9120, Source Technologies 9125, Toshiba e-Studio 20P, Toshiba e-Studio 25P, Toshiba e-Studio 30P, Toshiba e-Studio 40P, Toshiba e-Studio 400P, Toshiba e-Studio 430, Toshiba e-Studio 530, Toshiba e-Studio 450P, Toshiba e-Studio 500P, Toshiba e-

Studio 500P, Unisys 134, Unisys 136, Unisys UDS 130, Unisys UDS 132, Unisys UDS 640n, Unisys UDS 650n, Unisys UDS 140, Unisys UDS 142, Unisys UDS 540n, Unisys UDS 544n, Unisys UDS 630, and Unisys UDS 635dn (collectively, "Toner Cartridges").[2]

2. Lexmark owns and has standing to sue for infringement of United States Patent Nos. 5,337,032; 5,634,169; 5,758,231; 5,758,233; 5,768,661; 5,802,432; 5,875,378; 5,995,772; 6,009,291; 6,078,771; 6,397,015; 6,459,876; 6,487,383; 6,496,662; 6,678,489; 6,816,692; 6,871,031; 6,879,792; 7,139,510; 7,233,760; and 7,305,204 (the "Patents-in-Suit").

3. Each of the Toner Cartridges literally satisfies one or more claims of one or more of the Patents-in-Suit as shown in the following Table 1.

Table 1

	Toner Cartridges*						
Patents-in-Suit	E120	E23X/E24X/E33X/E34X	E260/E360/E460	E25X/E35X/E45X	T62X/T61X/T62X/T63X/T64X/T65X	E320/E322	E220 and E321/E323
5,337,032					1, 5, 6		
5,634,169			32, 36, 42		1-3, 32-34, 36, 42	32, 36, 42	32, 36, 42
5,758,231		1-16	1-16	1-16		1-16	1-16
5,758,233					1-4		
5,768,661					1, 2, 3,6		
5,802,432					1-3, 7-9		
5,875,378					1-3, 12-14, 24		
5,995,772			14, 15, 22, 32-34		1-3, 5, 7-9, 12, 14-18, 20, 21	14, 15, 22, 32-34	14, 15, 22, 32-34
6,009,291	1-2	1-2	1-2	1-2	1-2		
6,078,771	1, 5, 6, 10, 12, 13, 15	1, 5, 6, 10, 12, 13, 15	1, 5, 6, 10, 12, 13, 15	1, 5, 6, 10, 12, 13, 15	1, 2, 5, 6, 10, 12, 13, 15		
6,397,015			1, 2, 4, 9, 17, 19		1-4, 7-12, 14-19, 22-24	1, 2, 4, 9, 17, 19	1, 2, 4, 9, 17, 19

[2] Exhibit A attached hereto is a chart identifying which laser printer models sold under private label are equivalent to Lexmark's laser printer models.

6,459,876					1-28		
6,487,383	1, 2, 6, 10, 15, 19	1, 2, 6, 10, 15, 19	1, 2, 6, 10, 15, 19	1, 2, 6, 10, 15, 19	1, 2, 6, 10, 11, 15, 19	19	19
6,496,682		1,3,5,7		1,3,5,7			
6,678,489		5, 6	5, 6	5, 6			
6,816,692	1-14	1-13	1-13	1-13			
6,871,031		1-8, 8-12	1-6, 8-12	1-6, 8-12			
6,879,792		1-11	1-11	1-11			
7,139,518		1-10	1-10	1-10			
7,233,760	1-10, 11,13,14	1-10, 11,12,14	1-10, 11,12,14	1-10, 11,12,14			
7,305,204		1-20	1-20	1-8, 10-13			

* The private label models corresponding to the Toner Cartridges identified in Table 1 are likewise covered by the respective Patents-in-Suit. *See* Exhibit A.

4.Impression is accused of, among other things, importing, remanufacturing, selling and offering to sell (1) Toner Cartridges first sold outside of the United States and (2) Toner Cartridges first sold in the United States under Lexmark's Return Program (defined *infra*).

The Court's Rulings on Impression's Rule 12(b)(6) Motions to Dismiss

5. On July 30, 2013, Impression filed a Motion to Dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P., with respect to Toner Cartridges first sold *outside* the United States. (ECF No. 335.) On September 16, 2013, Impression filed a Second Motion to Dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P., with respect to Lexmark's Return Program Cartridges first sold *inside* the United States. (ECF No. 395.)

6. On March 27, 2014, the Court issued its Opinions and Orders on Impression's Rule 12(b)(6) Motions to Dismiss (ECF Nos. 615 and 617). In the Opinion and Order granting Impression's Second Motion to Dismiss, the Court stated:

> Lexmark does not allege that the authority of the sellers of the Return Program cartridges were restricted or conditioned in any way. In other words, the facts alleged by Lexmark do not suggest that the sellers had anything other than full authority to sell the Return Cartridges that practiced Lexmark's patents. Instead, Lexmark alleges only that the Return Program cartridges contained notices of a license restriction which bound the ultimate purchaser. Under *Quanta*, those post-sale use restrictions do not prevent patent rights from being exhausted given that the initial sales were authorized and unrestricted.

(ECF No. 615 at 11.)

7. The parties stipulate that Lexmark was not required to include allegations, or provide evidence, to rebut Impression's affirmative defense of patent exhaustion under the standards applicable to Impression's Second Motion to Dismiss under Rule 12(b)(6), Fed. R. Civ. P. Nonetheless, in order to ensure that all appellate rights are preserved, to confirm that there is a complete record for the purposes of appeal, and to promote further judicial economy by obviating any need for Lexmark to file a motion for leave to amend its Second Amended Complaint under Rule 15, Fed. R. Civ. P., in order to address the Court's statement that there was a "lack of specific allegations in the Second Amended Complaint" with respect to Lexmark's contracts for its Toner Cartridges sold under the Return Program (ECF No. 615 at 2), the parties jointly stipulate to supplement the record as set forth herein.

The Lexmark Return Program

8. Lexmark offers purchasers of its Toner Cartridges two options: (1) a Toner Cartridge sold without conditions and for which Lexmark receives full compensation (hereafter, "Regular Cartridge(s)"), and (2) a Toner Cartridge that is physically identical to the Regular Cartridge, but is sold subject to express contractual conditions and a conditional single-use license and for which Lexmark receives reduced compensation (hereafter, "Return Program Cartridge(s)").[3] In particular, purchasers of a Return Program Cartridge receive an up-front discount on the purchase price of the Return Program Cartridge in exchange for agreeing to use the Return Program Cartridge only once (the single-use license) and to return the empty Return Program Cartridge only to Lexmark for remanufacturing or recycling (hereafter, the "Return Program condition").[4] The price of the Return Program Cartridge reflects the value of the property interest and use rights conveyed to the purchaser under the express terms of the conditional sale contract and conditional single-use license conferred by Lexmark.

9. Each Toner Cartridge also includes a microchip that securely communicates with the printer once installed.

10. The microchip on a Return Program Cartridge has certain performance-related functions. In addi-

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[3] Although a Regular Cartridges and its corresponding Return Program Cartridge are physically identical, as discussed in the following paragraphs, the Regular Cartridges and Return Program Cartridges employ different microchips.

[4] Return Program Cartridges were previously referred to as "Prebate" cartridges.

tion, the microchip enforces the express contractual Return Program condition. For example, using some of the patented technology at issue in this case (e.g., the encoder wheel of U.S. Pat. No. 6,397,015), the printer and microchip in many of the Toner Cartridges at issue in this case [5] keep track of how much toner is remaining in the Return Program Cartridge. The printer uses this information to improve print quality characteristics as toner is depleted over time through use. When all of the toner has been used, the microchip stores this fact in memory. If the Return Program Cartridge subsequently is refilled without authorization and an attempt is made to reuse the Return Program Cartridge in a printer in breach of the contractual terms and single-use license under which it was sold, the microchip in combination with the printer will recognize this fact and enforce the Return Program condition by precluding use of the unauthorized cartridge.

11. To circumvent this technological measure for enforcing the express contractual Return Program condition, third parties have "hacked" Lexmark's microchips and created their own "unauthorized replacement" microchips. These "unauthorized replacement" microchips are publicly sold by third parties who have no affiliation with Lexmark, no authorization from Lexmark to hack its microchips, and no authorization from Lexmark to sell its microchips. Thus, "unauthorized replacement" microchips exist in the marketplace and, if an unauthorized replacement microchip is installed on a Return Program Cartridge, the printer is fooled into believing that the

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[5] These Toner Cartridges include, but are not limited to, the E260, E360, E460, T52X, T61X, T62X, T63X, T64X, T65X, E320, E322, E220, E321, and E323 model cartridges.

Return Program Cartridge is authorized and can be used, overriding the technological protection despite the continued existence and effectiveness of the express contractual restriction on re-use of Return Program Cartridges.

12. The microchip on a Regular Cartridge performs the same toner monitoring function in order to maximize print quality characteristics. However, after all of the toner has been depleted, the Regular Cartridge can be refilled with toner or otherwise remanufactured without any problem. The Regular Cartridge can then continue to be re-used without limitation because it was sold without restrictions on re-use or sale, and at a price that reflected those greater rights; no technological measure prevents such authorized re-use. Consequently, the microchip on a Regular Cartridge never needs to be replaced and can be re-used as many times as desired.

13. The Return Program condition is identified on the Return Program Cartridges and on their packaging (in multiple languages), as well as on Lexmark's website. For example, the following language, or substantially similar language, is placed on the outside packaging of every Return Program Cartridge:

RETURN EMPTY CARTRIDGE
TO LEXMARK FOR RECYCLING

> Please read before opening. Opening this package or using the patented cartridge inside confirms your acceptance of the following license agreement. The patented Return Program cartridge is sold at a special price subject to a restriction that it may be used only once. Following this initial use, you agree to return the empty cartridge only to

> Lexmark for recycling. If you don't accept these terms, return the unopened package to your point of purchase. A regular price cartridge without these terms is available.

See, e.g., Exhibit B, photographs of the Return Program condition as it appears on the cartridge and the packaging of a Lexmark T650/T652/T654/T656 Return Program Cartridge.

14. Lexmark sells the Toner Cartridges, including Regular Cartridges and Return Program Cartridges, directly to end-user customers and directly or indirectly to certain authorized resellers ("Resellers"). The Resellers include direct sales by Lexmark to authorized supplies dealers, authorized distributors, office superstores, and original equipment manufacturers and indirect sales by Lexmark to independent dealers and direct marketing resellers.

15. Lexmark has an express and enforceable contractual agreement with each of its end-user customers, including those end-user customers who purchase Toner Cartridges directly from Lexmark. In exchange for agreeing to the express Return Program condition, those end-user customers receive consideration in the form of an up-front discount on the purchase price of the Return Program Cartridge. If an end-user customer does not wish to accept the Return Program condition and conditional single-use license of the Return Program Cartridge, and instead wishes to acquire a Toner Cartridge not subject to any conditions or restrictions on use or disposition, such an end-user costumer has the option of purchasing a Regular Cartridge and receiving such additional property interests and rights in return for paying full price. *See* Exhibit B; *Ariz. Cartridge Remanufac-*

turers Ass'n, Inc. v. Lexmark Int'l, Inc., 421 F.3d 981, 987 – 88 (9th Cir. 2005).

16. Lexmark has an express and enforceable contract with each of the authorized supplies dealers and authorized distributors. *See* Authorized Supplies Dealer Contracts attached collectively as Exhibit C and Authorized Distributor Contracts attached collectively as Exhibit D. Each contract provides that Lexmark may issue bulletins that change the terms of said contract. Lexmark has issued bulletins for each of the Toner Cartridges that bind each authorized supplies dealer[6] and authorized distributor to the Return Program condition and further provide that each Return Program Cartridge is sold pursuant to a conditional single-use license. *See* Supplies Marketing Bulletins attached collectively as Exhibit E.

17. Authorized supplies dealers participate in a marketing program called the Platinum Preferred Program, and authorized distributors participate in a marketing program called the Universal-Preferred Program. Both the Platinum Preferred Program and Universal-Preferred Program contain contractual terms that bind the authorized supplies dealers and authorized distributors, respectively, to the Return Program condition and further provide that each Return Program Cartridge is sold pursuant to a conditional single-use license. *See* Platinum Preferred Program Announcement attached as Exhibit F; Universal-Preferred Program Announcement attached as Exhibit G.

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[6] Lexmark's agreement with Reynolds and Reynolds, one of its authorized supplies dealers, obligates the dealer to review the terms of the Return Program with end-users, including the Return Program condition.

18. Lexmark has an express and enforceable contract with each of the independent dealers that participates in a marketing program called the S.T.A.R. Program. Each contract provides that the participating independent dealer agrees to be bound by the terms and conditions of the S.T.A.R. Program. *See* S.T.A.R. Program Enrollment Form exemplar attached as Exhibit H. The terms and conditions of the S.T.A.R. Program bind each participating independent dealer to the Return Program condition and further provide that each Return Program Cartridge is sold pursuant to a conditional single-use license. *See* S.T.A.R. Toner Supplies and Parts Rebate Program Announcement attached as Exhibit I.

19. Lexmark has an express and enforceable contract with each of the direct marketing resellers. Each contract provides that the direct marketing reseller agrees to be bound by the terms and conditions of the Direct Marketing Reseller Program. *See* Lexmark Supplies Program for DMR Resellers Enrollment Form exemplar attached as Exhibit J. The terms and conditions of the Direct Marketing Reseller Program bind each direct marketing reseller to the Return Program condition and further provide that each Return Program Cartridge is sold Pursuant to a conditional single-use license. *See* Platinum Preferred Program Announcement attached as Exhibit K.

20. Participating independent dealers and direct marketing resellers purchase Toner Cartridges only from authorized distributors.

21. Lexmark has an express and enforceable contract with each of the office superstores that incorporates the terms of the Return Program. *See* Office

Superstore Contracts attached collectively as Exhibit L.

22. Lexmark has an express and enforceable contract with each original equipment manufacturer ("OEM") identified in paragraph 1. *See* OEM Contracts attached collectively as Exhibit M. Pursuant to these contracts, Lexmark sells Toner Cartridges to OEMs who then sell the Cartridges under their own brand name. While Lexmark also sells Toner Cartridges to IBM, Lexmark is excluding IBM from the definition of "OEM" as used herein because Lexmark is not asserting infringement as to the Return Program Cartridges that it sells to IBM. Each of the OEM contracts incorporate the terms of the Return Program.

23. Lexmark sells the Return Program Cartridges to the Resellers at a discounted price, which reflects the value of the property rights and interests conveyed by Lexmark under the express conditional sale contract between the parties and the conditional single-use license conferred by Lexmark. The Resellers are only authorized to resell the Return Program Cartridges subject to the contractual Return Program condition. Lexmark also sells Regular Cartridges to the Resellers; in those unconditional transactions, the Resellers receive full rights to the Regular Cartridges and Lexmark receives full compensation in return.

Determination of Infringement Based on March 27 Opinions and Orders

24. To the extent the foregoing does not disturb the holding of this Court's Opinion and Order of March 27, 2014 (ECF No. 615), Lexmark and Impression stipulate that under this Court's Opinion

and Order of March 27, 2014 (*id.*), Impression's importation, remanufacture, sale, and offer for sale of Return Program Cartridges first sold in the United States does not constitute infringement of the Patents-in-Suit pursuant to 35 U.S.C. § 271 under the doctrine of patent exhaustion. If the foregoing does disturb the holding of this Court's Opinion and Order of March 27, 2014 (ECF No. 615), Lexmark and Impression request that the Court reconsider and reissue its opinion regarding Return Program Cartridges.

25. Lexmark and Impression stipulate that under this Court's Opinion and Order of March 27, 2014 (ECF No. 617), Impression's importation, remanufacture, sale, and offer for sale of Toner Cartridges first sold outside of the United States constitutes infringement of the Patents-in-Suit pursuant to 35 U.S.C. § 271.

26. This Stipulated Order is subject to any appeal that Impression or Lexmark may take based on the Court's Opinions and Orders of March 27, 2014 (ECF Nos. 615 and 617).

27. Notwithstanding the provisions contained in this stipulation, Mr. O'Connor's personal opinion is that Lexmark's Return Program constitutes an invalid and unenforceable contract. Lexmark disagrees. Despite Mr. O'Connor's personal opinion, Impression and Lexmark have agreed to entry of this stipulation in order to promote judicial economy and to focus the issues on appeal. Lexmark and Impression expressly reserve all of their applicable rights (including all claims and defenses) on remand, if any.

28. Subject to and if appropriate in view of the qualifications of paragraph 24 *supra*, Lexmark and

Impression respectfully request entry of the Stipulated Permanent Injunction attached as Exhibit N, and the Stipulated Final Judgment, attached as Exhibit O.

HAVING BEEN SEEN AND AGREED TO ON MAY 29th, 2014, by:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CASE NO. 1:10-cv-00564-MRB

LEXMARK INTERNATIONAL, INC.
Plaintiff
v.
INK TECHNOLOGIES PRINTER SUPPLIES, LLC
et al
Defendants

STIPULATED PERMANENT INJUNCTION

This matter is before the Court on the stipulated motion of Plaintiff Lexmark International, Inc. ("Lexmark") and Defendant Impression Products, Inc. ("Impression") for entry of this Stipulated Permanent Injunction.

IT IS HEREBY FOUND, ORDERED, ADJUDGED WITH CONSENT OF THE PARTIES that:

1. Impression, is or has been, among other things, selling remanufactured and compatible toner cartridges in the United States and in foreign countries for use in Lexmark laser printers, including E120, E220, E230, E232, E234, E238, E240, E250, E260, E320, E322, E321, E323, E330, E332, E340, E342, E350, E352, E360, E450, E460, E460, T520, T522, X520, X522, T610, T612, T614, T616, T620, T622, X620, T630, T632, T634, T640, T642, T644, T650, T652, T654, T656, X650, X651, X652, X653, X654, X655, and X656 series printers, and the equivalent monochrome laser printers sold under private label, including the Dell 1700, Dell 1700N, Dell 1710,

Dell 1720, Dell 2230, Dell 2330, Dell 2350, Dell 3330, Dell 3333, Dell 3335, Dell 5200, Dell 5210, Dell 5300, Dell 5310, Dell 5230, Dell 5350, Dell 5530, Dell 5535, Dell E220, IBM 1116, IBM 1312, IBM 1412, IBM 1512, IBM 1512N, IBM InfoPrint 1120, IBM InfoPrint 1125, IBM Infoprint 1130, IBM Infoprint 1140, IBM InfoPrint 1332, IBM Infoprint 1352, IBM Infoprint 1372, IBM InfoPrint 1532, IBM Infoprint 1552, IBM Infoprint 1572, IBM Infoprint 1832, IBM Infoprint 1850, IBM Infoprint 1852, IBM Infoprint 1860, IBM Infoprint 1870, IBM Infoprint 1872, IBM Infoprint 1880, IBM Infoprint 1892, InfoPrint 1601, InfoPrint 1602, InfoPrint 1612, InfoPrint 1622, Infoprint 1822, IBM Infoprint 1823, IBM Infoprint 1930, IBM Infoprint 1940, Lenovo LI3900, LG 3510, LG 3350, LG 3850, LG 4010, Nashuatec P6220, Nashuatec P6225, Nashuatec P6230, Nashuatec 6240, Okidata MB780, Okidata MB790, Okidata 5500, Okidata 7180, Okidata 7190, Ricoh Afficio SP 4400, Ricoh Afficio SP 4410, Ricoh Afficio SP 4420, Sindoricoh 5000, Sindoricoh 5005, Sindoricoh 5050, Sindoricoh 4450, Sindoricoh 4550, Sindoricoh 4555, Sindoricoh 5450, Sindoricoh 5550, Source Technologies 9116, Source Technologies 9130, Source Technologies 9140, Source Technologies 9325, Source Technologies 9335, Source Technologies 9340, Source Technologies 9530n, Source Technologies 9550, Source Technologies 9552, Source Technologies 9630, Source Technologies 9650, Source Technologies 9620, Source Technologies 9622, Source Technologies ST 9120, Source Technologies 9125, Toshiba e-Studio 20P, Toshiba e-Studio 25P, Toshiba e-Studio 30P, Toshiba e-Studio 40P, Toshiba e-Studio 400P, Toshiba e-Studio430, Toshiba e-Studio 530, Toshiba e-Studio 450P, Toshiba e-Studio 500P, Toshiba e-

Studio 500P, Unisys 134, Unisys 136, Unisys UDS 130, Unisys UDS 132, Unisys UDS 640n, Unisys UDS 650n, Unisys UDS 140, Unisys UDS 142, Unisys UDS 540n, Unisys UDS 544n, Unisys UDS 630, Unisys UDS 635dn series printers (the "Accused Cartridges").

2. Lexmark owns and has standing to sue for infringement of United States Patent Nos. 5,337,032; 5,634,169; 5,758,231; 5,758,233; 5,768,661; 5,802,432; 5,875,378; 5,995,772; 6,009,291; 6,078,771; 6,397,015; 6,459,876; 6,487,383; 6,496,662; 6,678,489; 6,816,692; 6,871,031; 6,879,792; 7,139,510; 7,233,760; and 7,305,204 (the "Lexmark Patents");

3. The Lexmark Patents are valid and enforceable against Impression.

4. The following table identifies the patent claims of the Lexmark Patents that are satisfied literally by the Accused Cartridges:

Patents-in-Suit	Accused Cartridges*						
	E320	E23X/E24X/ E33X/E34X	E360/ E460/E460	E25X/ E35X/E45X	T92X/T61X/ T62X/T63X/ T64X/T65X/ X651/X652/ X654/X656	E320/ E322	E220 and E321/E323
5,337,832					1,5,6		
5,634,169			32,36,42		1-3,32-34, 36, 42	32,36,42	32,36,42
5,758,231		1-16	1-16	1-16		1-16	1-16
5,758,233					1-4		
5,768,661					1,2,3,6		
5,802,432					1-3, 7-9		
5,875,378					1-3,12-14,24		
5,995,772			14,15,22, 32-34		1-3,5,7-9, 12,14-18,20,21	14,15,22, 32-34	14,15,22, 32-34
6,009,291	1-2	1-2	1-2	1-2	1-2		
6,078,771	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,5,6,10, 12,13,15	1,2,5,6,10, 12,13,15		
6,397,815			1,2,4, 9,17,19		1-4,7-12, 14-19,22-24	1,2,4, 9,17,19	1,2,4, 9,17,19
6,459,876					1-28		
6,487,383	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6, 10,15,19	1,2,6,10, 11,15,19	19	19
6,496,662		1,3,5,7		1,3,5,7			
6,678,489		5, 6	5, 6	5, 6			
6,816,692	1-13	1-13	1-13	1-13			
6,871,831		1-6,8-12	1-6,8-12	1-6,8-12			
6,879,792		1-11	1-11	1-11			
7,138,510		1-10	1-10	1-10			
7,233,760	1-10, 11,12,14	1-10, 11,12,14	1-10, 11,12,14	1-10, 11,12,14			
7,305,204		1-20	1-20	1-8,10-13			

* The private label models corresponding to the Accused Cartridges identified in Table 1 are likewise covered by the respective Patents-in-Suit.

5. Except as permitted in Paragraph 6, this Court permanently enjoins Impression, as well as

those persons or companies in active concert or participation with Impression who receive actual notice of the order by personal service or otherwise, from making, using, selling, offering for sale or importing into the United States Accused Cartridges that infringe any of the above-identified patent claims or are not colorably different from the Accused Cartridges.

6. Nothing herein limits or shall be construed to limit in any way Impression's activities with respect to toner cartridges in which Lexmark's patent rights have been exhausted or to redesigned toner cartridges that do not infringe Lexmark's patents. Further, nothing herein limits or shall be construed to limit in any way Impression's activities with respect to any Lexmark Patents that have expired, lapsed, are no longer enforceable, or have found to be invalid by a court of competent jurisdiction. Finally, nothing herein limits or shall be construed to limit in any way Impression's activities outside the United States.

7. This Court retains jurisdiction over Lexmark and Impression to the extent necessary to enforce the terms of this Stipulated Permanent Injunction.

8. This Stipulated Permanent Injunction shall be binding upon and shall inure to the benefit of Lexmark and Impression, as well as each of their respective subsidiaries, corporate parents, affiliates, and/or successors and assigns.

Date: June 23, 2014

/s/ Michael R. Barrett
United States District Judge

HAVING BEEN SEEN AND AGREED TO ON MAY 29th, 2014, by:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

LEXMARK INTERNATIONAL, INC.
Plaintiff,
v.
INK TECHNOLOGIES PRINTER SUPPLIES, LLC, ET AL.
Defendants.

Civil Action No.
1:10-CV-564-MRB

STIPULATED FINAL JUDGMENT

This matter is before the Court on Plaintiff Lexmark International, Inc.'s ("Lexmark's") and Defendant Impression Products, Inc.'s ("Impression's") Joint Motion For Entry Of Stipulated Order Regarding Supplementation Of Record, Limited Reconsideration To The Extent Necessary To Preserve Appellate Rights, For Non-Infringement With Respect To Toner Cartridges First Sold Inside The United States, For Infringement For Toner Cartridges First Sold Outside The United States, And For Entry Of Final Judgment ("Joint Motion"), and the Court having considered the Joint Motion and being otherwise sufficiently advised,

IT IS HEREBY FOUND, ORDERED, ADJUDGED that:

1. Judgment is entered in favor of Lexmark and against Impression on Count I of Lexmark's Second Amended Complaint with respect to accused cartridges first sold outside of the United States.

2. Judgment is entered in favor of Impression and against Lexmark on Count I of Lexmark's Second Amended Complaint with respect to accused cartridges that are subject to the Return Program condition *(i.e.,* Return Program Cartridges) and first sold in the United States.

3. This Stipulated Entry of Final Judgment resolves all questions of liability as between Lexmark and Impression and is final, ~~except for an accounting with the meaning of 28 U.S.C. § 1292(e)(2).~~

4. Any claims Lexmark may have against unidentified John Doe Defendants are hereby dismissed without prejudice.

5. Subject to paragraph 3 *supra, all* claims against each of the named Defendants in this action are now resolved.

6. This Stipulated Entry of Final Judgment is subject to any appeal that Impression or Lexmark may take based on the Court's Opinions and Orders of March 27, 2014 (ECF Nos. 615, 617), regarding whether Lexmark's United States patent rights are exhausted in (1) accused cartridges first sold outside of the United States and (2) accused cartridges that are subject to the Return Program condition *(i.e.,* Return Program cartridges) and first sold inside the United States.

7. Lexmark and Impression make this Stipulated Entry of Final Judgment to promote judicial economy and expressly reserve all of their applicable rights (including all claims and defenses) on remand, if any.

Date: June 23, 2014

/s/ Michael R. Barrett
United States District Judge

HAVING BEEN SEEN AND AGREED TO ON MAY 29th, 2014, by:

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UNITED STATES DISTRICT COURT
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CINCINNATI DIVISION

LEXMARK INTERNATIONAL, INC.
Plaintiff,

v.

INK TECHNOLOGIES PRINTER SUPPLIES, LLC, ET AL.

Defendants.

Civil Action No.
1:10-CV-564-MRB

ORDER ON JOINT MOTION FILED UNDER SEAL ON MAY 29, 2014

This matter is before the Court on the Joint Motion, filed under seal on May 29, 2014, by Plaintiff Lexmark International, Inc. ("Lexmark") and Defendant Impression Products, Inc. ("Impression Products"), for Entry of Stipulated Order Regarding Supplementation of Record, Limited Reconsideration to the Extent Necessary to Preserve Appellate Rights, for Non-Infringement with respect to Toner Cartridges First Sold Outside the United States, and for Entry of Final Judgment ("Joint Motion"). (Doc. 661).

IT IS HEREBY FOUND, ORDERED, ADJUDGED that:

1. The Joint Motion is granted.

2. In accordance with the Joint Motion, the district court record is hereby supplemented with the stipulations and agreements contained in the Joint

Motion as well as the documents attached thereto (collectively, "the Supplemented Record").

3. Lexmark's and Impression Products' joint motion for reconsideration—of the Court's order (Doc. 615) regarding Impression Products' Second Motion to Dismiss regarding the invalidity of Lexmark's Return Program under patent law—is granted based on the Supplemented Record.

4. As stated in the Court's order, the "issue presented" in Impression Products' Second Motion to Dismiss was "whether the Return Program is invalid as a matter of law. Having considered the relevant caselaw and briefings of the parties, the Court finds that Lexmark's patent infringement [based on the Return Program] are barred as a matter of law by the doctrine of patent exhaustion and must be dismissed." (Doc. 615, p. 4).

5. Based on the Supplemented Record, the following portion of the Court' order (Doc. 615, p. 11) is vacated.

> Lexmark does not allege that the authority of the sellers of the Return Program cartridges were restricted or conditioned in any way. In other words, the facts alleged by Lexmark do not suggest that the sellers had anything other than full authority to sell the Return Cartridges that practiced Lexmark's patents.

6. After reconsidering Impression Products' Second Motion to Dismiss (Doc. 615) in view of the Supplemented Record, the Court again finds that Lexmark's patent infringement claims based on its Return Program are barred as a matter of law by the doctrine of patent exhaustion and must be dismissed

based on the same analysis of patent law set forth in the Court's order of March 27, 2014. (Doc. 615)

Date: June 23, 2014

s/Michael R. Barrett
MICHAEL R. BARRETT, Judge
United States District Court